

COA No. 46733-0-II
Pierce County Superior Court No. 13-1-02753-6

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

In re the Personal Restraint of
ENDY DOMINGO-CORNELIO,
Petitioner

PERSONAL RESTRAINT PETITION

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TABLE OF CONTENTS

I. STATUS OF THE PETITIONER	1
II. STATEMENT OF THE CASE	1-15
A. THE CHARGES	2
B. PRETRIAL INVESTIGATION BY DEFENSE COUNSEL	2-5
C. THE CHILD HEARSAY HEARING	5-7
D. TRIAL TESTIMONY	8-10
E. CLOSING ARGUMENT	11-12
F. THE VERDICTS AND SENTENCING HEARING	12-13
G. DIRECT APPEAL	13-15
III. GROUNDS FOR RELIEF	15
IV. PRP PROCEDURAL ISSUES	16
A. THE PETITION IS NOT BARRED AS SUCCESSIVE	16
B. THE COURT MAY ADDRESS ISSUES RAISED IN THE DIRECT APPEAL	16
C. THE PETITION IS TIMELY	16
D. UNLAWFUL RESTRAINT	17-18
V. ARGUMENTS FOR RELIEF	18
A. GENERAL STANDARDS FOR INEFFECTIVE ASSISTANCE OF COUNSEL	18-20
B. TRIAL COUNSEL FAILED TO CONDUCT A MEANINGFUL PRETRIAL INVESTIGATION WHEN HE FAILED TO INTERVIEW KEY WITNESSES AND OBTAIN IMPORTANT RECORDS. THESE FAILURES DEPRIVED MR. CORNELIO-DOMINGO OF THE RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL	20-28

C. TRIAL COUNSEL WAS INEFFECTIVE FOR FAILING TO CROSS-EXAMINE WITNESSES AT THE CHILD HEARSAY HEARING OR OBJECT TO ADMISSION OF CHILD HEARSAY STATEMENTS WHEN SEVERAL <u>STATE V. RYAN</u> FACTORS WERE DIRECTLY APPLICABLE.....	28-33
D. TRIAL COUNSEL WAS INEFFECTIVE FOR FAILING TO CROSS EXAMINE WITNESSES, FAILING TO OBJECT TO IMPROPER VOUCHING, AND FAILING TO OBJECT TO ERRORS OF CONSTITUTIONAL MAGNITUDE IN CLOSING ARGUMENT	34-43
E. THERE HAS BEEN A SIGNIFICANT CHANGE IN THE LAW THAT APPLIES RETROACTIVELY TO PETITIONER’S CASE AND MATERIAL FACTS EXIST WHICH HAVE NOT BEEN PREVIOUSLY PRESENTED AND HEARD, WHICH REQUIRED VACATION OF PETITIONER’S SENTENCE UNDER RAP 16.4	43-49
VI. CONCLUSION.....	49
VII. STATEMENT OF FINANCES.....	50
VIII. OATH.....	51

TABLE OF AUTHORITIES

United States Supreme Court

<i>Chambers v. Mississippi</i> , 410 U.S. 284, 295, 93 S.Ct. 1038, 35 L.Ed.2d 297 (1973).....	34
<i>Davis v. Alaska</i> , 415 U.S. 308, 315, 94 S.Ct. 1105, 39 L.Ed.2d 347 (1974).....	34
<i>Hinton v. Alabama</i> , 134 S. Ct. 1081, 1089, 188 L. Ed. 2d 1 (2014).....	24
<i>Kimmelman v. Morrison</i> , 477 U.S. 365 (1986).....	19
<i>Miller v. Alabama</i> , 567 U.S. 460, 471, 132 S. Ct. 2455, 183 L.Ed.2d 407 (2012).....	43, 44, 46, 47, 48
<i>Montgomery v. Louisiana</i> , 136 S. Ct. 718, 193 L.Ed.2d 599 (2016).....	43, 47, 48
<i>Roper v. Simmons</i> , 543 U.S. 551, 125 S. Ct. 1183, 161 L.Ed.2d 1 (2005).....	43
<i>Strickland v. Washington</i> , 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674.....	18, 19, 20, 21, 22
<i>Washington v. Texas</i> , 388 U.S. 14, 23, 87 S.Ct. 1920, 18 L.Ed.2d 1019 (1967).....	34
<i>Wiggins v. Smith</i> , 539 U.S. 510, 521, 123 S.Ct. 2527, 156 L.Ed. 2d 471 (2003)	20, 21
<i>United States v. Cronin</i> , 466 U.S. 648, 104 S. Ct. 2039, 80 L.Ed.2d 657 (1984).....	33

Washington State Supreme Court

<i>In re Crace</i> , 147 Wn.2d 835, 846-47, 280 P.3d 1102 (2012).....	19
<i>In re Pers. Restraint of Davis</i> , 152 Wn.2d 647, 671-72, 101 P.3d 1 (2004).....	18, 33

<i>In re Vandervlugt</i> , 120 Wn.2d 427, 432, 842 P.2d 950 (1992).....	16, 29
<i>Matter of Lui</i> , 188 Wn.2d. 525, 397 P.3d 90, 101–02 (2017).....	20
<i>State v. Benn</i> , 120 Wn.2d 631, 663, 845 P.2d 289 (1993).....	19
<i>State v. Foster</i> , 135 Wn.2d 441, 455-56, 957 P.2d 712 (1998).....	34
<i>State v. Houston-Sconiers</i> , 188 Wn.2d. 1, 391 P.3d 409 (2017).....	43, 48
<i>State v. Hudlow</i> , 99 Wn.2d 1, 15, 659 P.2d 514 (1983).....	34
<i>State v. Jones</i> , 183 Wn.2d 327, 352 P.3d 776 (2015)	21, 25, 26, 27
<i>State v. Kirkman</i> , 159 Wn.2d 918, 927, 155 P.3d 125, 130 (2007).....	37
<i>State v. O'Dell</i> , 183 Wn.2d 680, 692, 358 P. 3d 359, 365 (2015).....	44, 45, 46, 47, 48
<i>State v. Parris</i> , 98 Wn.2d 140, 144, 654 P.2d 77 (1982).....	34
<i>State v. Ray</i> , 116 Wn.2d 531, 548, 8066 P.2d 1220 (1991).....	21
<i>State v. Ryan</i> , 103 Wn.2d 165, 691 P.2d 197 (1984).....	28
<i>State v. West</i> , 139 Wn.2d 37, 43–44, 983 P.2d 617 (1999).....	26

Washington State Court of Appeals

<i>In the Matter of the Pers. Restraint of Kevin Light-Roth</i> , 75129-8-I, 2017 WL 3473644, at (Division I, Aug. 14, 2017).	45, 48
<i>In re Percer</i> , 111 Wn. App. 843, 864, 47 P.3d 576 (2002), <i>aff'd on</i> <i>this point of law</i> , 150 Wn.2d 41, 75 P.3d 488 (2003).....	16, 29
<i>State v. Alexander</i> , 64 Wn. App. 147, 154, 822 P.2d 1250 (1992).....	36
<i>State v. Bautista-Caldera</i> , 56 Wn. App. 186, 195, 783 P.2d 116 (1989).....	39, 40

<i>State v. Emery</i> , 174 Wn.2d 741, 760-61, 278 P.3d 653 (2012)	42
<i>State v. Floyd</i> , 11 Wn. App. 1, 2, 521 P.2d 1187 (1974).....	25
<i>State v. Gribble</i> , 60 Wn. App. 374, 838, 804 P.2d 634 (1991).....	31
<i>State v. Grimes</i> , 165 Wn. App. 172, 267 P.3d 454 (2011)	37
<i>State v. Hayes</i> , 165 Wn. App. 507, 265 P.3d 982 (2011).....	37
<i>State v. Hess</i> , 12 Wn. App. 787, 788–90, 532 P.2d 1173 (1975).....	25
<i>State v. Johnston</i> , 143 Wn. App. 1, 20, 177 P.3d 1127 (2007).....	30, 34
<i>State v. Kennealy</i> , 151 Wn. App. 861, 880, 214 P.3d 200 (2009)	30
<i>State v. Powell</i> , 62 Wn. App. 914, 919, 916 P.2d 86 (1991), <i>review</i> <i>denied</i> 118 Wn.2d 1013, 824 P.2d 491 (1992).	42
<i>State v. Roberts</i> , 25 Wn. App. 830, 834, 611 P.2d 1297 (1980)	34
<i>State v. Ronquillo</i> , 190 Wn. App. 765, 361 P.3d 779 (2015)	43, 47, 48
<i>State v. Smiley</i> , 195 Wn. App. 185, 379 P.3d 149 (2016).....	41
<i>State v. Solis-Diaz</i> , 194 Wn. App. 129, 140-41, 376 P.3d 458 (2016).....	46
<i>State v. Thierry</i> , 190 Wn. App. 680, 360 P.3d 940 (2015),	38, 39, 42
<i>State v. Visitacion</i> , 55 Wn. App. 166, 173–74, 776 P.2d 986 (1989).....	21
<i>State v. Warren</i> , 134 Wn. App. 44, 52–53, 138 P.3d 1081, 1085 (2006), <i>affirmed</i> , 165 Wn.2d 17, 195 P.3d 940 (2008).....	36

Federal Court

<i>Avila v. Galaza</i> , 297 F.3d 911, 920 (9th Cir.2002).....	26
<i>Baumann v. United States</i> , 692 F.2d 565, 580 (9th Cir.1982).....	22
<i>Bragg v. Galaza</i> , 242 F.3d 1082, 1088 (9th Cir. 2001), <i>amended by</i> 253 F.3d 1150 (2001).....	27

<i>Brubaker v. Dickson</i> , 310 F.2d 30 (9th Cir. 1962), <i>cert. denied</i> , 372 U.S. 978, 10 L. Ed. 2d 143, 83 S. Ct. 1110 (1963); <i>In re Saunders</i> , 2 Cal. 3d 1033, 472 P.2d 921, 926-27, 88 Cal. Rptr. 633 (1970); <i>People v. McDowell</i> , 69 Cal. 2d 737, 447 P.2d 97, 73 Cal. Rptr. 1 (1968); <i>People v. Ibarra</i> , 60 Cal. 2d 460, 386 P.2d 487, 490-91, 34 Cal. Rptr. 863 (1963).....	28
<i>Gerlaugh v. Stewart</i> , 129 F.3d 1027 (9th Cir.1997)	19
<i>Hart v. Gomez</i> , 174 F.3d 1067, 1070 (9th Cir.1999).....	22
<i>Howard v. Clark</i> , 608 F.3d 563, 573 (9th Cir.2010)	26
<i>Jones v. Wood</i> , 114 F.3d 1002 (9th Cir.1997).	21
<i>Lord v. Wood</i> , 184 F.3d 1083, 1093 (9th Cir.1999).....	22
<i>Reynoso v. Giurbino</i> , 462 F.3d 1099, 1112–13 (9th Cir.2006)	23
<i>Sanders v. Ratelle</i> , 21 F.3d 1446, 1457 (9th Cir.1994)	22
<i>Tucker v. Ozmint</i> , 350 F.3d 433, 444 (4th Cir.2003).....	22
<i>United States v. Tucker</i> , 716 F.2d 576, 583 (9th Cir.1983)	22

Statutes

RCW 10.73.090	16-17
RCW 10.73.140	16
RCW 9A.44.120.....	5, 29
RCW 9.94A.540.....	44

Rules

RAP 16.4.....	17-18
RAP 2.5(a)	29, 33, 37

I. STATUS OF THE PETITIONER

On July 16, 2014, Endy Domingo-Cornelio was convicted of four class A felony sex offenses in Pierce County Superior Court under Cause Number 13-1-02753-6, specifically: Rape of a Child in the First Degree, and three counts of Child Molestation in the First Degree. CP 44. At the time of alleged incident, Mr. Domingo-Cornelio was only fourteen years old.

Mr. Domingo-Cornelio went to trial on July 2, 2014. RP 1. He was convicted of all counts. RP 717-19. At sentencing on September 24, 2014, the Court imposed a sentence of 240 months on the rape of a child count and 198 months on the child molestation counts. CP 48. Mr. Domingo-Cornelio is currently serving this sentence as he files this personal restraint petition to challenge the constitutionality of his confinement under this cause number. He is incarcerated by the Washington State Department of Corrections at Coyote Ridge Corrections Center in Connell, Washington.

Mr. Domingo-Cornelio filed a direct appeal on April 28, 2015 under Court of Appeals Cause Number 46733-0-II. That opinion was filed on April 5, 2016, and affirmed the convictions. 193 Wn. App. 1014 (2015). The Washington State Supreme Court denied a petition for review on August 31, 2016. 186 Wn.2d. 1006 (2016).

II. STATEMENT OF THE CASE

A. The Charges

At the young age of 20-years-old, Endy Domingo-Cornelio's life forever changed when he was accused of sexually molesting his younger cousin, A.C. CP 1-2. The offenses allegedly happened six years prior to when the allegations surfaced. *See Id.* The State claims that the acts occurred between November 2007 and November 2009. *Id.* This would mean that the offenses occurred when A.C. was between four and six years old and Endy was between fourteen and sixteen years old. *Id.*, RP 403, 547, 550.

On July 9, 2013, the State charged Mr. Domingo-Cornelio with one count of Rape of a Child in the First Degree and three counts of Child Molestation in the First Degree. CP 1-2.

B. Pre-Trial Investigation by Defense Counsel

Mr. Domingo-Cornelio's trial counsel interviewed four witnesses: A.C., Jose Cornelio (A.C.'s father), Maria Perez (Jose's girlfriend) and Tiffany Croll (A.C.'s mother) prior to trial. During those interviews, trial counsel learned that A.C. had been acting out sexually with other children and that Tiffany Croll took A.C. in for counseling at age 4 in order to explore her sexual abuse history. Exhibit A, Interview Transcript of Tiffany

Croll, RP 561-64. Yet Mr. Domingo-Cornelio's attorney never sought these records. Exhibit B, Declaration of Karen Sanderson.

Mr. Domingo-Cornelio's attorney interviewed A.C.'s father, Jose Cornelio, and learned that Endy Domingo and his brother Edgar Domingo were invited to stay with Jose during a time when Jose was depressed. Exhibit C, Interview Transcript of Jose Cornelio. However, nearly every time that Endy was at the house, he was with his brother Edgar. *Id.* Despite knowing that Endy's brother was also staying at Jose's house at all relevant periods when the State claims A.C. was sexually abused, trial counsel never interviewed Edgar. Exhibit D, Declaration of Edgar Domingo. Edgar is a critical witness to Endy's defense. Edgar was willing to speak to counsel and testify on behalf of Endy. Ex. D; Ex. B.

Trial counsel interviewed A.C. before trial. A.C. disclosed that the very *first* person she told about "what Endy did to you" was her "best friend, Alondra." Exhibit E, Interview Transcript of A.C. She claimed that she told Alondra three months before disclosing to her mother. *Id.* Despite this information, trial counsel never attempted to interview Alondra to determine what A.C. told her, if anything.

Mr. Domingo-Cornelio's attorney never interviewed any of the family members. For example, Mr. Domingo-Cornelio's mother babysat A.C. for years prior to and after the alleged abuse. Ex. B, pg. 2. During this

time she had almost daily contact with A.C. Id. She would have testified that A.C. never acted nervous or upset around Endy. Id. Further, she would have testified that A.C. continued to want to come over to her home even after the allegations came out. Id.

Family members would have testified that Tiffany accused A.C.'s father, Jose Cornelio, of sexually abusing A.C. for years before A.C.'s disclosure. Id. They could have also testified to Tiffany's reputation for untruthfulness and even described specific acts where Tiffany was caught lying. Id. It appears that Tiffany would do anything to harm Jose, including lodging false sexual assault claims against him. *See Id.* at 3.

Family members would have also testified that Tiffany stayed in different places with different people, often leaving her daughters in the care of people she did not know. Id. She had many boyfriends over the years that she and Jose were separated. Id. None of these family members were ever interviewed by trial attorney or an investigator. Id. None of these family members were provided an option to testify for Endy at trial.

Endy's trial attorney failed to seek police reports that show A.C. was exposed to drugs, violence, and neglect while in the care of her mother, Tiffany Croll. Id. at 9. A witness in a robbery incident involving Tiffany told police that Tiffany was involved with gangs, left her children with drug

addicts, and paid babysitters with drugs. Id. This was never explored by Endy's attorney either in pretrial interviews nor at trial.

Endy's trial attorney also did not gather important records that could have been critical to questioning the timing of A.C.'s disclosure of abuse. Id. There are two divorce files in Pierce County Superior Court between Tiffany Croll and Jose Domingo. Id. at 5. Both were quickly and easily obtained by our investigator. Id. Tiffany first filed for divorce in 2006, but the parties decided to mend their marriage and dismissed the petition. Id. Then, in 2011, Tiffany filed for divorce again. Id. On October 12, 2012, the Court issued the final parenting plan giving full custody to Jose and ordering Tiffany to pay child support of \$281 per month. Id. On October 13, 2012, the *very next day*, A.C. was pressured again about whether her father had sexually abused her when she answered "no but Endy did." Id., RP 98. This timing and collateral evidence is highly probative to Endy's defense. It was not brought out at trial.

C. The Child Hearsay Hearing

On July 2, 2014, the Court began a multi-day child hearsay hearing to determine whether hearsay statements made by A.C. to her mother, an ARNP nurse, and a forensic child interviewer with the Pierce County Prosecutor's Office would be admissible at trial pursuant to RCW 9A.44.120. RP 3.

Mr. Domingo-Cornelio's trial attorney did not call any witnesses. Additionally, he did not ask any cross-examination questions of A.C.'s father, Jose Cornelio, the child interviewer employed by the Prosecutor's office, Keri Arnold, or even *A.C., the alleged victim*. RP 35, 60, 84. When the hearing was completed and it was time for the parties to argue whether the hearsay should be admitted, Mr. Domingo-Cornelio's attorney simply said: "I think that the statute and the Ryan factors have been met by the State, and so I don't have a cogent argument to present that the State has not met under Ryan and the statute that the child's statements to others should come in." RP 140-141.

This is despite the fact that investigation and testimony during the hearing demonstrated that during the relevant time periods, A.C. was known by her family members as being a child who often lied, and that "nobody would ever believe her." RP 94. Punishment did not seem to deter this behavior. RP 95. A.C. also was known to steal from stores and other children. RP 95. Even the weekend before trial began, Tiffany testified that she caught A.C. stealing from a family member. RP 96. Tiffany also testified that A.C. did not seem to yet understand that stealing and lying was wrong. *See* RP 96 ("she is getting there.") She also did not have much confidence that A.C. would stop stealing in the future. Id.

Further, trial counsel did not elicit any information in cross-examination concerning A.C.'s motive to lie, most importantly that her mother had just lost custody of her in a contentious divorce battle *the day before* the allegations arose. Trial counsel failed to highlight the circumstances around the initial disclosure, to show that the statements were not spontaneous. Additionally, trial counsel did not cross-examine nor argue that A.C. admitted she was pressured before making the disclosure. See Exhibit E, Interview Transcript of A.C., page 20 (A.C. describes that she "always tells people" she doesn't want her dad to go to jail); page 22 (A.C. claims "my mom" was talking about trying to put A.C.'s dad in jail); page 14 (A.C. claims that she told her mother because she kept asking and "she bothered me.") A.C. also expressed inability to remember her disclosures. *Id.* page 15 ("I don't really remember what I was talking about").

Finally, A.C. had recently recanted to her step-mother, but this information was never brought out at the child hearsay hearing nor argued as a basis to exclude the child hearsay statements. Defense counsel had information, confirmed by Maria Perez (A.C.'s stepmother), that A.C. told Ms. Perez that she wasn't really sure if it happened and that sometimes it appeared to her that it was just a dream. Despite knowing this information, trial counsel did nothing with it at the child hearsay hearing.

D. Trial Testimony

Seven witnesses testified. Mr. Domingo-Cornelio's attorney did not cross-examine two of those witnesses. Additionally, trial counsel did not call any defense witnesses at trial. RP 664. This was despite the fact that there were relevant defense witnesses who were available and willing to testify. Ex. B.

Tiffany Croll testified that she separated from Jose Cornelio in August 2006 when A.C. was about three years old. RP 546, 569. After that point, A.C. often stayed with her dad in a mobile home trailer park where he lived in Puyallup, Washington. RP 546. The residence has two bedrooms, a living room, and a bathroom. RP 582.

Jose Cornelio testified that A.C. would never sleep in the living room when Endy was over. RP 584. He explained that A.C. would always sleep in his bed with him in his room. RP 583-84.

Tiffany Croll testified that she has repeatedly asked A.C. if "anything bad has happened to her" since A.C. was three years old. RP 561, RP 566. A.C. would always answer "no." RP 561. Tiffany's mother and sister also repeatedly asked A.C. these questions. RP 561, 567. These questions were prompted by A.C. exhibiting sexualized behaviors with her older brother, touching herself sexually, and role playing "boyfriend and girlfriend." RP 561-62. On one occasion, A.C. laid her sister down, laid

on top of her, and said “I’m the boyfriend.” RP 562. This caused Tiffany great concern. RP 562. When A.C. was between the ages of three and five, her mother took her to a clinic for a full sexual assault physical examination. RP 567. The clinic reported no forceful entry. *Id.* Tiffany could not recall the amount of times she has asked A.C. about suspected abuse saying “too many to count.” RP 568. Tiffany often angrily accused A.C. saying “I know that something happened to you or you wouldn’t have been doing this, and I want you to tell me.” RP 572. A.C. always denied she had been sexually abused and claimed she learned those things from a movie. *Id.*

The divorce between Tiffany and Jose was finalized on October 12, 2012. RP 565. Jose was awarded full custody of A.C. and her younger sister. RP 546, Ex. B. Tiffany testified that on October 13, 2012, A.C. told her that Endy had “done bad stuff to her.” RP 556. This allegation came out after Tiffany had been on the phone discussing her suspicions that Jose was sexually molesting her. RP 556. Tiffany testified that A.C. said “it wasn’t who I thought.” *Id.* A.C. did not go into much detail, simply saying he touched her, she touched him and they kissed. RP 557. Tiffany admitted she got upset and responded “in a way that I probably shouldn’t have.” *Id.* Tiffany then called police. *Id.*

A.C. testified that she moved into her dad’s trailer when she was in second grade. RP 490. She testified she always slept in her room. RP 494-

95. She claimed that Endy would sometimes sleep over. RP 496. He would sleep on a big couch. Id. She claimed on those nights she would sleep on the little couch. Id. This is where A.C. claims that Endy “grabbed her” though she doesn’t remember if he ever touched her private parts “on the skin part.” RP 499. A.C. claims she touched his private parts on the skin. RP 502. A.C. testified that these things happened when she was four or five. RP 501. She said it happened “all the time.” RP 502. She claimed that Endy kissed her only twice. RP 503. When asked directly if Endy licked her anywhere, A.C. said “no.” RP 504.

Trial counsel did not object to ARNP Keri Arnold testifying that delayed disclosure was “typical” and suggesting that it is common in most cases due to fear of a family member getting in trouble. RP 430. She was allowed to testify that children can share graphic details of abuse and “are frequently not crying or appearing to have a significant emotional response.” RP 456. Trial counsel did not object to this line of questioning. Ms. Arnold explained, “coaching refers to the concern that the child is making a *false allegation* because they are being instructed to do so by another individual.” RP 450 (emphasis added). Ms. Arnold then testified that she had “no concern” that A.C. was coached or that suggestibility affected her disclosure. RP 476. Again, trial counsel did not object nor did he follow up with cross-examination on that point.

E. Closing Argument

During closing argument, the deputy prosecuting attorney argued that to prove the acts occurred beyond a reasonable doubt, all that was required was A.C.'s testimony. RP 674. But then, the prosecutor went on to say:

“Can you imagine a system where we did require something else? You have heard the testimony. Also apply your common sense and experience here. Kids often don’t tell about abuse that they have suffered until well after it’s over and done with, or has been happening for years. It could be a period of months, but more often than not, it’s years later, if they ever tell.”

RP 674.

The prosecutor went on to argue that:

“Most of the time, 95 percent of the time, there is no physical findings. And according to the law, our law here in Washington State, that doesn’t matter. You don’t need that additional evidence.” RP 675.

Then, the deputy prosecutor went back to her public policy argument:

“It doesn’t matter that these things don’t exist in this case. In such a system, most children would have to be told, sorry we can’t prosecute your case, we can’t hold your abuser responsible because there is nothing to corroborate what you are telling us and no one is going to believe a child. We don’t have a system like that. That’s not how our system works. A child telling you what happened to them is evidence and it’s enough.

If more was required, we couldn't hold the majority of abusers responsible, including this abuser. We couldn't hold this defendant responsible for what he did to Alejandra."

RP 675.

Mr. Domingo's trial attorney did not object.

The prosecutor also argued that delayed disclosure was "extremely common" and "this is especially true when it's a family member." RP 679. She argued that "the person who does the abusing is often a family member or close family friend for many reasons." *Id.* She argued that the length of time between the alleged abuse and the disclosure was completely normal, common, and understandable given the "fear" that abused children have. *Id.*

F. The Verdicts and Sentencing

On July 16, 2014, a jury convicted Mr. Domingo-Cornelio of all charged offenses. RP 717-19. The sentencing hearing occurred on September 25, 2014. RP 726. Mr. Domingo-Cornelio had, before this case, absolutely no felony criminal history. RP 728-29. Nevertheless, his offender score and total sentence were substantially higher than someone who has no felony criminal history. As calculated by the trial court, the "other current offenses" resulted in an offender score of 9 and a standard sentencing range of 240-318 months. RP 729.

During sentencing, defense counsel did not argue that Endy's age at the time of the crime warranted an exceptional sentence below the standard

range. RP 731-32. Counsel did not compare the sentence Endy would have received under the Juvenile Justice Act with the Washington Sentencing Act. *Id.* Instead, he simply noted that Endy was “a juvenile when these incidents took place,” and was “barely 20 himself” and that “20 years is a very long time in prison.” RP 731-32. Trial counsel did not brief the issue nor cite to any authority that would have assisted the Court in its analysis. The Court did not address whether the fact that Endy was just fourteen years old at the time of the crime warranted a sentence below the standard sentencing range. RP 733-740. The court imposed a sentence of 240 months, with 36 months community custody. RP 733.

G. Direct Appeal

Mr. Domingo-Cornelio filed a timely appeal to this court. In the brief written by his appointed counsel, filed on April 29, 2015, Mr. Cornelio-Domingo advanced the following arguments:

- (1) Trial Court abused its discretion, in admitting the testimony of ARNP Hannah-Truscott regarding the statements of A.C. under ER 803(a)(4) when the examination of A.C. did not include a physical examination, and its primary stated purpose was to identify potential perpetrators of abuse rather than diagnose a medical condition.
- (2) The testimony of ARNP Hannah Truscott violated the constitutional rights of the defendant by violating the presumption of innocence, in that she stated as a given both the existence of abuse and the identity of the abuser, the defendant.

- (3) The trial court abused its discretion in denying the defense the opportunity to cross-examine the alleged victim A.C. about prior statements made at the defense interview that were inconsistent with her testimony.
- (4) The trial court abused its discretion under State v. Ryan, 103 Wn.2d 165, 691 P.3d 197 (1984) when it allowed the admission of child hearsay statements, and did not fully address issues of A.C.'s character, trustworthiness, and the spontaneity of her statements before ruling that the statements were admissible.
- (5) The evidence was insufficient to support a finding of guilt when the alleged victim A.C. repeatedly denies the instances of first degree rape when she testified in court, which is inconsistent with statements she made in the forensic interview, and when the mother Ms. Croll testified that A.C. was exhibiting sexualized behavior several months before the defendant allegedly molested and raped her.
- (6) The prosecutor engaged in prosecutorial misconduct of a constitutional magnitude, in closing argument, denying Defendant his Sixth Amendment Right to a fair trial, by impermissibly shifting the burdens of proof and ignoring the presumption of innocence, by commenting on alleged victim A.C.'s demeanor, by speculating on witness' motivations, and inviting the jury to speculate on such motives not in evidence.
- (7) Counsel for defendant was ineffective, depriving him of his Sixth Amendment right to a fair trial, when he failed to raise the issue of alleged victim A.C.'s truthfulness, veracity, and trustworthiness prior to the admission by the Court of the child hearsay statements and the granting of the State's motion in limine to prevent testimony from mother Ms. Croll and father Mr. Cornelio regarding A.C.'s lying and stealing, when he failed to object to ARNP Hannah-Truscott's prejudicial statements about the finding of abuse and the identification of the defendant as the abuser, and when he failed to

object to several instances of prosecutorial misconduct in closing argument.

- (8) There have been several trial errors which, even if standing alone would not constitute reversible error, are taken together as cumulative error, mandating reversal for denial of a fair trial for Defendant under the Sixth Amendment.

This court addressed each of these arguments on their merits and rejected each of them in an unpublished opinion. 193 Wn. App. 1014 (2015). The Washington State Supreme Court denied a petition for review on August 31, 2016. 186 Wn.2d. 1006 (2016). Mr. Domingo-Cornelio's direct appeal did not address many of the issues discussed in this petition.

III. GROUND FOR RELIEF

- A. TRIAL COUNSEL WAS INEFFECTIVE FOR FAILING TO FULLY INVESTIGATE AND INTERVIEW KEY WITNESSES PRIOR TO TRIAL
- B. TRIAL COUNSEL WAS INEFFECTIVE FOR FAILING TO CROSS-EXAMINE WITNESSES AT THE CHILD HEARSAY HEARING OR OBJECT TO ADMISSION OF CHILD HEARSAY STATEMENTS WHEN SEVERAL STATE V. RYAN FACTORS WERE DIRECTLY APPLICABLE
- C. TRIAL COUNSEL WAS INEFFECTIVE AT TRIAL FOR FAILING TO CROSS EXAMINE WITNESSES, FAILING TO OBJECT TO IMPROPER VOUCHING, AND FAILING TO OBJECT TO ERRORS OF CONSTITUTIONAL MAGNITUDE IN CLOSING ARGUMENT
- D. THERE HAS BEEN A SIGNIFICANT CHANGE IN THE LAW THAT APPLIES RETROACTIVELY TO PETITIONER'S CASE, AND MATERIAL FACTS EXIST WHICH HAVE NOT BEEN PREVIOUSLY PRESENTED AND HEARD, WHICH REQUIRES VACATION OF PETITIONER'S SENTENCE UNDER RAP 16.4

IV. PRP PROCEDURAL ISSUES

A. THE PETITION IS NOT BARRED AS SUCCESSIVE

Several provisions of Washington case law, statutes, and rules bar successive claims under certain circumstances. None of them apply here. This is Mr. Domingo-Cornelio's first collateral attack on his conviction in this case, so RAP 16.4(d) does not apply. For the same reasons, RCW 10.73.140, which limits the jurisdiction of the Court of Appeals over some successive petitions, does not apply.¹

B. THE COURT MAY ADDRESS ISSUES RAISED IN THE DIRECT APPEAL

The mere fact that an issue has been raised on appeal does not automatically prevent raising the issue again in a personal restraint petition.² An issue should be revisited if the ends of justice would be served by doing so. *Id.* The ends of justice may be served under several circumstances, including that the earlier decision was incorrect and the issue is of constitutional magnitude.³

C. THE PETITION IS TIMELY

RCW 10.73.090(1) gives a defendant one year—measured from the date the judgment becomes final—to file a collateral attack on his

¹ RCW 10.73.140

² *In re Vandervlugt*, 120 Wn.2d 427, 432, 842 P.2d 950 (1992).

³ *In re Percer*, 111 Wn. App. 843, 864, 47 P.3d 576 (2002), aff'd on this point of law, 150 Wn.2d 41, 75 P.3d 488 (2003).

conviction or sentence.⁴ Here, Mr. Domingo-Cornelio's conviction became final when the Supreme Court filed its order denying petition for review on August 31, 2016.⁵ This PRP, filed on the date indicated in the certificate of service, was filed less than one year from that date; this PRP is therefore timely.

D. UNLAWFUL RESTRAINT

A PRP is one way to collaterally attack an unlawful conviction or sentence. To warrant relief, the PRP must show that the petitioner is under "restraint" and such restraint is "unlawful."⁶ Mr. Cornelio was convicted of Rape of a Child in the First Degree and three counts of Child Molestation in the First Degree and sentenced to twenty years in prison.⁷ Mr. Domingo-Cornelio is currently serving that sentence in a prison here in Washington State and is, therefore, clearly under restraint.⁸

Such restraint is unlawful and subject to collateral attack if Mr. Domingo-Cornelio can show that his case meets one of the numerous criteria defined in RAP 16.4(c).⁹ The arguments raised below relate to

⁴ RCW 10.73.090

⁵ RCW 10.73.090(3)(c)

⁶ RAP 16.4(a)

⁷ RP 733

⁸ RAP 16.4(b). "Restraint" includes current incarceration, collateral consequences of conviction, or any other "disability" caused by the conviction. In re Martinez, 171 Wn.2d 354, 362, 256 P.3d 277, 281 (2011).

⁹ RAP 16.4(c). This definition includes any conviction or sentence that was "entered," "obtained," or "imposed" in violation of the Constitution or any other "laws of the State of Washington." Id.

ineffective assistance of trial counsel which is a constitutional right that may be raised in a PRP.¹⁰ Further, this PRP raises material facts which have not been previously presented and heard.¹¹ Finally, this PRP addresses significant changes in the law which may materially affect the conviction and sentence in Mr. Domingo-Cornelio's case.¹²

V. ARGUMENTS FOR RELIEF

A. GENERAL STANDARDS FOR INEFFECTIVE ASSISTANCE OF COUNSEL

1. The accused is entitled to the effective assistance of counsel

A criminal defendant has a state and federal constitutional right to effective assistance of counsel.¹³

2. Ineffective Assistance Claims are Reviewed de Novo

A claim that counsel was ineffective is a mixed question of law and fact that is reviewed de novo.¹⁴

3. PRP Standard for Review – Ineffective Assistance of Counsel

To obtain relief on collateral review based on a constitutional error, the petitioner must demonstrate by a preponderance of the evidence that he was actually and substantially prejudiced by the error.¹⁵ But “if a personal

¹⁰ RAP 16.4(c)(2)

¹¹ RAP 16.4(c)(3)

¹² RAP 16.4(c)(4)

¹³ Strickland v. Washington, 466 U.S. 668, 698 (1984).

¹⁴ Id. at 698.

¹⁵ In re Pers. Restraint of Davis, 152 Wn.2d 647, 671–72, 101 P.3d 1 (2004).

restraint petitioner makes a successful ineffective assistance of counsel claim, he has necessarily met his burden to show actual and substantial prejudice.”¹⁶

4. Standard for Proving Ineffective Assistance of Counsel.

“A defendant is denied effective assistance of counsel if the complained-of attorney conduct (1) falls below a minimum objective standard of reasonable attorney conduct, and (2) there is a probability that the outcome would be different but for the attorney's conduct.”¹⁷ Thus, to prevail on a claim of ineffective assistance of trial counsel, an appellant must show both deficient performance and prejudice.¹⁸

The first requirement—the performance prong—measures whether defense counsel’s conduct fell within the wide range of competence for a criminal defense attorney. To show deficient performance, the petitioner must show that defense counsel’s conduct, measured by “prevailing professional norms” fell below “an objective standard of reasonableness.”¹⁹ In assessing the merits of ineffective counsel claims, courts look to the totality of counsel’s efforts.²⁰

¹⁶ In re Crace, 174 Wn.2d 835, 846–47, 280 P.3d 1102 (2012).

¹⁷ State v. Benn, 120 Wn.2d 631, 663, 845 P.2d 289 (1993) (emphasis omitted) (citing Strickland, 466 U.S. at 687–88).

¹⁸ Strickland, 466 U.S. at 687.

¹⁹ Kimmelman v. Morrison, 477 U.S. 365, 384 (1986) (citing Strickland, 466 U.S. at 688–89).

²⁰ Gerlaugh v. Stewart, 129 F.3d 1027, 1036 (9th Cir. 1997).

The second requirement—the prejudice prong—asks whether, despite the error, the defendant received a fair trial.²¹ To show prejudice, the appellant need not prove that the outcome would have been different but must show only a “reasonable probability”—by less than a more likely than not standard—that, but for counsel’s unprofessional errors, the result of the proceedings would have been different. *Id.* To rebut the presumption of reasonableness, a defendant must establish an absence of any legitimate trial tactic that could explain counsel’s performance.²² Strategic choices made after thorough investigation of law and facts relevant to plausible options are virtually unchallengeable; and strategic choices made after less than complete investigation are reasonable precisely to the extent that reasonable professional judgments support the limitations on investigation.²³

B. TRIAL COUNSEL FAILED TO CONDUCT A MEANINGFUL PRETRIAL INVESTIGATION BY FAILING TO INTERVIEW KEY WITNESSES AND OBTAIN IMPORTANT RECORDS. THESE FAILURES DEPRIVED DEFENDANT THE RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL

1. Deficient Performance

Trial counsel’s failure to obtain records and interview key witnesses constitutes both deficient performance and was unreasonable under

²¹ *Strickland*, 466 U.S. at 694.

²² *Matter of Lui*, 188 Wn.2d 525, 397 P.3d 90, 101–02 (2017) *quoting State v. Reichenbach*, 153 Wn.2d 126, 130, 101 P.3d 80 (2004).

²³ *Wiggins v. Smith*, 539 U.S. 510, 521, 123 S.Ct. 2527, 156 L.Ed. 2d 471 (2003) (quoting *Strickland*, 466 U.S. at 690–91, 104 S.Ct. 2052).

Strickland. Effective assistance of counsel requires trial counsel must investigate the case, including potential witnesses, or make a reasonable and informed decision to not investigate.²⁴ Investigating the case includes interviewing witnesses.²⁵

“Failure to investigate witnesses called to attention of trial counsel as important constitutes ineffectiveness.”²⁶ Whether defense counsel’s failure to investigate is deficient performance depends upon the reasons for the trial lawyer’s failure to investigate.²⁷ The law governing the basic function of a criminal defense attorney to investigate the facts is well established.²⁸ Strategic decisions are entitled to deference *only* if they are made after **thorough investigation of law and facts** or are supported by reasonable professional judgments.²⁹

²⁴ State v. Jones, 352 P.3d 776, 782, 183 Wn.2d 327, 339-40 (2015).

²⁵ Id. citing State v. Ray, 116 Wn.2d 531, 548, 806 P.2d 1220 (1991)(“Failure to investigate or interview witnesses, or to properly inform the court of the substance of their testimony, is a recognized basis upon which a claim of ineffective assistance of counsel may rest.” (citing State v. Visitacion, 55 Wn. App. 166, 173–74, 776 P.2d 986 (1989)).

²⁶ Jones v. Wood, 114 F.3d 1002 (9th Cir.1997).

²⁷ Id. (holding that whether counsel’s failure to interview lay witnesses was deficient “depends on the reason for the trial lawyer’s failure to interview.”).

²⁸ Wiggins v. Smith, 539 U.S. 510, 521–22, 525, 123 S.Ct. 2527, 156 L.Ed.2d 471 (2003) (holding that counsel must investigate to make an informed decision about strategy); Strickland v. Washington, 466 U.S. 668, 686, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984) (“The benchmark for judging any claim of ineffectiveness must be whether counsel’s conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result.”)

²⁹ Strickland, at 690-91 (emphasis added.)

Counsel must, at a minimum, conduct a reasonable investigation enabling him to make informed decisions about how best to represent his client.³⁰ Defense counsel “has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary.”³¹ “A lawyer who fails adequately to investigate, and to introduce into evidence, [information] that demonstrates his client's factual innocence, or that raises sufficient doubts as to that question to undermine confidence in the verdict, renders deficient performance.”³²

In particular, counsel's failure to investigate possible methods of impeachment may in itself constitute ineffective assistance of counsel.³³ Failure to interview or attempt to interview key prosecution witnesses constitutes deficient performance.³⁴ The duty to investigate is especially pressing where, as here, the witnesses and their credibility are crucial to the government's case.³⁵

³⁰ See Sanders v. Ratelle, 21 F.3d 1446, 1457 (9th Cir.1994).

³¹ Id. at 691, 104 S.Ct. 2052

³² Lord v. Wood, 184 F.3d 1083, 1093 (9th Cir.1999) (quoting Hart v. Gomez, 174 F.3d 1067, 1070 (9th Cir.1999)) (internal quotation marks omitted).

³³ Tucker v. Ozmint, 350 F.3d 433, 444 (4th Cir.2003).

³⁴ United States v. Tucker, 716 F.2d 576, 583 (9th Cir.1983); Baumann v. United States, 692 F.2d 565, 580 (9th Cir.1982) (“We have clearly held that defense counsel's failure to interview witnesses that the prosecution intends to call during trial may constitute ineffective assistance of counsel.”).

³⁵ See Reynoso v. Giurbino, 462 F.3d 1099, 1112–13 (9th Cir. 2006).

Here, Mr. Domingo-Cornelio's trial attorney failed to investigate important witnesses and obtain critical records that would have been a necessary part of Mr. Domingo-Cornelio's defense at trial. He did not seek A.C.'s counseling records which capture both the lack of allegations of abuse during the relevant time periods that A.C. now claims she was abused, but also detail the alleged abuse after she made her initial allegations. Trial counsel knew these records existed and did not attempt to obtain them. Further, trial counsel did not interview family members who had daily interactions with A.C. during this timeframe, including Endy's brother who was almost always with Endy when he stayed over at Jose Cornelio's trailer. He failed to interview key prosecution witnesses, including witnesses who provided the most damaging child hearsay evidence at trial.

Public records were available to Mr. Domingo-Cornelio's attorney, yet he never sought them. Such records would have shown that A.C.'s mother exposed her young daughters to many men over the years, and also indicate exposure to drugs, violence and neglect. The divorce proceedings were discussed during pretrial interviews and at trial. However, the exact

timing of the divorce was never fully brought out during trial.³⁶ Such timing was critical to the defense case.³⁷

2. Prejudice

Having established deficient performance, Mr. Domingo-Cornelio must also “show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.”³⁸ “When a defendant challenges a conviction, the question is whether there is a reasonable probability that, absent the errors, the factfinder would have had a reasonable doubt respecting guilt.”³⁹

Here, had defense counsel properly interviewed all relevant witnesses, the testimony at trial would have been remarkably different. These witnesses include a friend that A.C. allegedly disclosed to before she spoke with police or her mother, family members who had daily contact with A.C. during all relevant periods, and an eyewitness family member

³⁶ In trial counsel's opening statement, he explained that “the evidence will show that this was a family, unfortunately, going through a divorce and custody battle.” RP 411. However, the fact that the child custody battle ended with Tiffany losing custody of her daughters *the day before* the alleged disclosure is never mentioned during trial.

³⁷ It is clear that defense counsel did not know of this timing, despite having easy access to the divorce records in the same courthouse as the criminal trial. On cross-examination of Jose Cornelio, trial counsel asked several questions about the child custody case without ever being able to help refresh recollection of the exact timing of such proceedings. RP 594-95.

³⁸ Hinton v. Alabama, 134 S. Ct. 1081, 1089, 188 L. Ed. 2d 1 (2014); In re Pers. Restraint of Netherton, 277 Wn.2d 798, 801, 306 P.3d 918 (2013) (ineffective assistance of appellate counsel).

³⁹ Id.

who was at the house with A.C. and Endy on almost every occasion where A.C. claims she was abused. The mere fact that a witness would have testified that he was in the home with A.C. and Endy, sleeping on a couch with them, and never once saw any interaction between the two cousins at night is direct evidence contradicting what A.C. claimed at trial. Failure to interview key witnesses deprives an accused the “opportunity to develop a theory of the case” and deprives him of potentially important testimony to support that theory. Thus, “when considering the case as a whole, defense counsel failed to provide the meaningful adversarial role that the Sixth Amendment to the United States Constitution guarantees.”⁴⁰

Had trial counsel conducted the tasks necessary to investigate, there is a reasonable chance that some jurors, or even one juror, would have found that Mr. Domingo-Cornelio was not guilty.

We can certainly defer to a trial lawyer's decision against calling witnesses if that lawyer investigated the case and made an *informed* and reasonable decision against conducting a particular interview or calling a particular witness.⁴¹ But courts will not defer to trial counsel’s uninformed

⁴⁰ State v. Jones, 352 P.3d 776, 778, 183 Wn.2d 327, 331 (2015).

⁴¹ See, e.g., State v. Hess, 12 Wn. App. 787, 788–90, 532 P.2d 1173 (1975) (decision not to subpoena potentially harmful witness was justified); State v. Floyd, 11 Wn. App. 1, 2, 521 P.2d 1187 (1974) (decision not to call alibi witness legitimate part of trial strategy).

or unreasonable failure to interview a witness.⁴² As the United States Supreme Court has explained, “[S]trategic choices made after less than complete investigation are reasonable precisely to the extent that reasonable professional judgments support the limitations on investigation.”⁴³

Here, like State v. Jones, there is a reasonable probability that the failure to interview key witnesses, subpoena critical records, and call an eye witness to testify on behalf of defense affected the trial’s outcome. This is especially true because the only three people who slept on couches at Jose Cornelio’s house were A.C., Mr. Domingo-Cornelio, and his brother Edgar. Edgar was a key witness who would have testified that he never saw A.C. and Endy together on a couch, that A.C.’s explanation of where people slept was incorrect, and that Edgar was always with Endy when they slept over at Jose’s.⁴⁴

⁴² See Jones, supra, at 340 (finding that trial counsel did not make an informed decision against interviewing a witness, and could therefore not make an informed decision against calling that witness to testify at trial). See also, Avila v. Galaza, 297 F.3d 911, 920 (9th Cir.2002) (“[C]ounsel can hardly be said to have made a strategic choice when s/he has not yet obtained the facts on which a decision could be made.”)

⁴³ Jones, supra, at 340, citing Strickland, 466 U.S. at 690–91, 104 S.Ct. 2052.

⁴⁴ Jones at 342, citing State v. West, 139 Wn.2d 37, 43–44, 983 P.2d 617 (1999); See Howard v. Clark, 608 F.3d 563, 573 (9th Cir. 2010) (“Whatever the challenges to Ragland’s credibility, his testimony might well have tipped the balance in Howard’s favor. At the very minimum, if Ragland was ready and willing to testify as to Howard’s innocence, and Howard was deprived of such testimony because of his attorney’s shoddy investigation, our confidence in the jury’s verdict would be significantly undermined.”).

This case, like Jones, “involves a credibility contest” between the State’s witnesses and the defense theory at trial.⁴⁵ Because there were witnesses who could have testified in support of the defense case, the jurors could have weighed that credibility against the State’s witnesses. This is especially critical because there was no corroborating physical evidence. Further, the only other person who was around A.C. and Endy during that time frame, sleeping in the same room as them, was ready and available to testify that he never saw anything that A.C. claimed occurred. This would have been critical testimony to rebut A.C.’s claims. Thus, there is a reasonable probability that the trial outcome would have been different had trial counsel properly investigated and called these witnesses to testify at trial.⁴⁶

A defendant seeking relief under a theory that trial counsel failed to properly investigate his case must show, at a minimum, that there is a reasonable likelihood that the investigation would have produced “useful information not already known to the defendant's counsel.”⁴⁷ Ignorance of the law or inadequate investigation, rather than deliberate choice resulting

⁴⁵ Jones at 344-45.

⁴⁶ *See Jones*, at 345 (“counsel's unexplained failure to interview clearly identified and accessible witnesses undermines our confidence in the jury verdict rejecting Jones's self-defense claim.”)

⁴⁷ Bragg v. Galaza, 242 F.3d 1082, 1088 (9th Cir. 2001), *amended by* 253 F.3d 1150 (2001).

in the failure to present an available theory of the defense, can lend support for the granting of a new trial.⁴⁸ Mr. Domingo-Cornelio has shown, at the very least, that interviewing Edgar Cornelio and obtaining the court records from the divorce trial would have produced useful information not known to defense counsel, and the failure to investigate thoroughly warrants granting Mr. Domingo-Cornelio a new trial.

C. TRIAL COUNSEL WAS INEFFECTIVE FOR FAILING TO CROSS-EXAMINE WITNESSES AT THE CHILD HEARSAY HEARING OR OBJECT TO ADMISSION OF CHILD HEARSAY STATEMENTS WHEN SEVERAL STATE V. RYAN FACTORS WERE DIRECTLY APPLICABLE

1. Deficient Performance

When a defense attorney has a non-frivolous argument in support of keeping out damaging evidence at trial, and fails to advocate for his client entirely, such performance is defective. In this case, there was no reasonable strategic choice to conceding admission of important evidence; evidence that would later be the sole basis for the most serious charges against Mr. Domingo-Cornelio. Conceding the Ryan⁴⁹ factors in this instance cannot be found to be a legitimate trial tactic. This is especially true given that so many of the Ryan factors were at issue. Highlighting

⁴⁸ Brubaker v. Dickson, 310 F.2d 30 (9th Cir. 1962), *cert. denied*, 372 U.S. 978, 10 L. Ed. 2d 143, 83 S. Ct. 1110 (1963); In re Saunders, 2 Cal. 3d 1033, 472 P.2d 921, 926-27, 88 Cal. Rptr. 633 (1970); People v. McDowell, 69 Cal. 2d 737, 447 P.2d 97, 73 Cal. Rptr. 1 (1968); People v. Ibarra, 60 Cal. 2d 460, 386 P.2d 487, 490-91, 34 Cal. Rptr. 863 (1963).

⁴⁹ State v. Ryan, 103 Wn.2d 165, 691 P.2d 197 (1984).

those issues and arguing that the child hearsay statements should not be admitted at trial would have drastically changed the evidence against Mr. Domingo-Cornelio at trial. Without the child hearsay statements, Mr. Domingo-Cornelio would not have been convicted of Rape of a Child in the First Degree, and would have faced a standard sentencing range of 149-198 months for Child Molestation in the First Degree (rather than the standard sentencing range of 240-318 months for Rape of a Child in the First Degree).

Further, he may have very well been found not guilty of the offenses with only A.C.'s testimony substantiating the charges. Therefore, this error prejudiced Mr. Domingo-Cornelio's right to a fair trial. Further, this error was manifest error affecting a constitutional right. Thus, it must be re-reviewed under RAP 2.5(a).⁵⁰

In determining the reliability of child hearsay statements under RCW 9A.44.120, the trial court considers the Ryan reliability factors: (1) whether there is an apparent motive to lie, (2) the general character of the declarant, (3) whether more than one person heard the statements, (4) the spontaneity of the statements, (5) the timing of the declaration and the

⁵⁰ In re Vandervlugt, 120 Wn.2d 427, 432, 842 P.2d 950 (1992) (an issue should be revisited if the ends of justice would be served by doing so. The ends of justice may be served under several circumstances, including that the earlier decision was incorrect and the issue is of constitutional magnitude. In re Percer, 111 Wn. App. 843, 864, 47 P.3d 576 (2002), aff'd on this point of law, 150 Wn.2d 41, 75 P.3d 488 (2003).

relationship between the declarant and the witness, (6) whether the statement contained express assertions of past fact, (7) whether the declarant's lack of knowledge could be established through cross examination, (8) the remoteness of the possibility of the declarant's recollection being faulty, and (9) whether the surrounding circumstances suggested the declarant misrepresented the defendant's involvement.⁵¹ To demonstrate ineffective assistance of counsel based on the failure to object, the defendant must show (1) that the trial court would have sustained the objection if raised, (2) an absence of legitimate strategic or tactical reasons for failing to object, and (3) that the result of the trial would have been different.⁵²

Mr. Domingo-Cornelio's trial counsel completely failed to articulate a basis for keeping out the child hearsay statements when there were several strong bases for doing so. There was evidence that A.C. had a reputation for untruthfulness, as articulated by her mother during the child hearsay hearing. RP 94-96. Further, the disclosure was not spontaneous, but was responsive to her mother's continued assertions that A.C. was being abused by her father Jose Cornelio.⁵³ The timing of the disclosure, the day after

⁵¹ State v. Kennealy, 151 Wn. App. 861, 880, 214 P.3d 200 (2009); citing Ryan, *supra*.

⁵² State v. Johnston, 143 Wn. App. 1, 20, 177 P.3d 1127 (2007).

⁵³ Kennealy, *supra*, at 883 ("statements made in response to questioning are spontaneous so long as the questions are not leading or suggestive.")

A.C.'s mother lost custody of her to Jose, and the facts surrounding that contentious custody battle, were not mentioned as an apparent motive to lie.⁵⁴ The motive to lie was to direct attention away from her father, to point the finger at someone else so that she could stay with her father. This was supported by her statements before the disclosure – that she always told people that she didn't want her daddy to go to jail. Here, the content of the accusation was completely suggested to A.C. by her mother who had repeatedly claimed she "knew" that A.C. was sexually molested and touched by someone, and that she believed that to be her father, Jose. These concerns were amplified when the court ordered sole custody to Jose on October 12, 2012. Thus, there was ample evidence of a motive to fabricate. A.C. created a scapegoat, someone other than her father, after she feared her mother would do something to send her father to jail, when she pointed the finger at Endy the *very next day* after Jose was awarded full custody. This timing and motive was not even mentioned to the trial court. There was no tactical reason for why his attorney would *concede* admission of this harmful evidence, especially when A.C. had recently recanted.

Here, it is clear that Mr. Domingo-Cornelio received ineffective assistance of counsel when his attorney *agreed* with the State that the Ryan

⁵⁴ "The critical inquiry is whether the child was being truthful" when she made the hearsay statements. State v. Gribble, 60 Wn. App. 374, 838, 804 P.2d 634 (1991).

factors were established when there were clear factors that could have been disputed. If Mr. Domingo-Cornelio had a zealous advocate arguing against admission of the child hearsay, the Court could have ruled the damaging child hearsay testimony inadmissible. There was *no* legitimate strategic or tactical reason for the concession. And it is clear from the record, and A.C.'s testimony at trial, that without the child hearsay, there was *no evidence* supporting the most serious charge of rape of a child in the first degree, and weak evidence supporting the child molestation counts.

2. Prejudice

Without the child hearsay statements, Mr. Domingo-Cornelio would not have been convicted of Rape of a Child in the First Degree, and would have faced a standard sentencing range of 149-198 months for Child Molestation in the First Degree (rather than the standard sentencing range of 240-318 months for Rape of a Child in the First Degree).⁵⁵ Thus, omitting the child hearsay from the record would have changed the trial result and decreased the standard sentencing range Mr. Domingo-Cornelio faced by up to 10 years.

Further, Mr. Domingo-Cornelio may have very well been found not guilty of the remaining offenses with only A.C.'s somewhat confused

⁵⁵ A.C. specifically denied that any penetration occurred, and her testimony alone could not have supported a conviction for Rape of a Child in the First Degree.

testimony substantiating the charges. Therefore, this error prejudiced Mr. Domingo-Cornelio's right to a fair trial. Further, this error was manifest error affecting a constitutional right. Thus, it must be re-reviewed under RAP 2.5(a).⁵⁶

Although courts will generally delve into an individualized inquiry, in certain cases prejudice may be presumed.⁵⁷ The presumptive prejudice rule "is limited to the complete denial of counsel and comparable circumstances including ... (2) **where counsel entirely fails to subject the prosecution's case to meaningful adversarial testing.**"⁵⁸ In this case, counsel utterly and completely failed to subject the prosecutor's case to meaningful adversarial testing. He did not properly investigate, interview critical prosecution witnesses, interview favorable defense witnesses who were ready and willing to testify, and he *conceded* admission of the most harmful evidence contained in child hearsay statements. Counsel was not a zealous advocate at trial; he made concessions that gravely hurt Mr. Domingo-Cornelio's case. There is no reasonable strategic reason to justify

⁵⁶ In re Vandervlugt, 120 Wn.2d 427, 432, 842 P.2d 950 (1992) (an issue should be revisited if the ends of justice would be served by doing so. The ends of justice may be served under several circumstances, including that the earlier decision was incorrect and the issue is of constitutional magnitude. In re Percer, 111 Wn. App. 843, 864, 47 P.3d 576 (2002), *aff'd on this point of law*, 150 Wn.2d 41, 75 P.3d 488 (2003).

⁵⁷ United States v. Cronin, 466 U.S. 648, 104 S. Ct. 2039, 80 L.Ed.2d 657 (1984).

⁵⁸ In re Pers. Restraint of Davis, 152 Wn.2d 647, 673-75 (2004) (emphasis added).

such deficient performance. Prejudice must be presumed and a new trial must be granted.

D. TRIAL COUNSEL WAS INEFFECTIVE AT TRIAL FOR FAILING TO CROSS EXAMINE WITNESSES, FAILING TO OBJECT TO IMPROPER VOUCHING, AND FAILING TO OBJECT TO ERRORS OF CONSTITUTIONAL MAGNITUDE IN CLOSING ARGUMENT

1. Failing to Cross-Examine Witnesses

Mr. Domingo-Cornelio has a Sixth Amendment right to cross-examine adverse witnesses to reveal possible bias or prejudice.⁵⁹ Exposure of a witness' motivation or bias is a proper and important function of a constitutionally protected right of cross-examination. *Id.* If the failure to effectively cross-examine witnesses could have overcome the evidence against the defendant, such failure may be ineffective assistance of counsel.⁶⁰

⁵⁹ The right to confront and cross-examine adverse witnesses is guaranteed by both the federal and state constitutions. U.S. Const. amend 6; Const. art. I, § 22; Washington v. Texas, 388 U.S. 14, 23, 87 S.Ct. 1920, 18 L.Ed.2d 1019 (1967); Davis v. Alaska, 415 U.S. 308, 315, 94 S.Ct. 1105, 39 L.Ed.2d 347 (1974); State v. Hudlow, 99 Wn.2d 1, 15, 659 P.2d 514 (1983). In the constitutional sense, "confrontation" means more than mere physical confrontation. *Davis*, 415 U.S. at 315, 94 S.Ct. 1105. The primary and most important component is the right to conduct a meaningful cross-examination of adverse witnesses. State v. Foster, 135 Wn.2d 441, 455-56, 957 P.2d 712 (1998). The purpose is to test the perception, memory, and credibility of witnesses. State v. Parris, 98 Wn.2d 140, 144, 654 P.2d 77 (1982); State v. Roberts, 25 Wn. App. 830, 834, 611 P.2d 1297 (1980). Confrontation therefore helps assure the accuracy of the fact-finding process. Chambers v. Mississippi, 410 U.S. 284, 295, 93 S.Ct. 1038, 35 L.Ed.2d 297 (1973). Whenever the right to confront is denied, the ultimate integrity of this fact-finding process is called into question. *Id.* As such, the right to confront must be zealously guarded. State v. Kilgore, 107 Wn. App. 160, 184-85, 26 P.3d 308 (2001).

⁶⁰ State v. Johnston, 143 Wn. App. 1, 20, 177 P.3d 1127, 1137 (2007); See Davis, supra.

Here, Mr. Domingo-Cornelio's trial counsel was deficient by failing to meaningfully cross-examine the key witnesses who testified against Mr. Domingo-Cornelio. That failure was prejudicial. If his attorney had presented a thorough, developed confrontation of the biases and motivations of the witnesses, especially A.C. and her mother, the jury very well may have found Mr. Domingo-Cornelio not guilty.

First, trial counsel was woefully inadequate in highlighting the repeated suggestions A.C.'s mother made, from the time that A.C. was three until the disclosure, urging A.C. to tell her "the truth" that her father, Jose Cornelio, was sexually abusing her. Tiffany Croll discussed many reasons for this suspicion, including the fact that she caught A.C. engaged in sexually inappropriate behaviors at a young age (age 3). It was never highlighted or even mentioned that these sexually inappropriate behaviors were *before* the alleged touching that A.C. claimed occurred between her and Endy.

Second, trial counsel seemed confused at best, and did not effectively cross examine the witnesses about the timing of disclosure occurring the *very next day* after Jose Cornelio won sole custody of A.C. in a contentious divorce proceeding.

These failures and others, as seen in the complete record, were prejudicial to Mr. Domingo-Cornelio's right to a meaningful cross-

examination of adverse witnesses. It undermined the accuracy of the fact-finding process and calls into question the trial result.

2. Failing to Object to Improper Vouching

The prosecutor called an “expert,” Keri Arnold-Harms, for the sole purpose of vouching for the credibility of the victim. Ms. Arnold-Harms is employed as a “child interviewer” within the Pierce County Prosecuting Attorney’s office. RP 423. Ms. Arnold-Harms testified that she had “no concern” that A.C. was coached or that suggestibility affected her disclosure. RP 476. This was after lengthy testimony explaining that delayed disclosure was “typical” and suggesting that it is most common in cases due to fear of a family member getting into trouble. RP 428-29. She explained away the lack of emotional response when discussing sexual abuse, telling the jury that kids “are frequently not crying to appearing to have a significant emotional response.” RP 455-56 This was all in an effort to bolster the credibility of A.C., a ten-year-old girl who showed no emotional response while testifying, and who had waited six years after the alleged abuse to tell anyone about it.

No witness may state an opinion about a victim’s credibility because such testimony “invades the province of the jury to weigh the evidence and

decide the credibility of the witness.”⁶¹ Impermissible opinion testimony regarding the defendant's guilt may be reversible error because such evidence violates the defendant's constitutional right to a jury trial, which includes the independent determination of the facts by the jury.⁶² While a witness in a child sex abuse case may testify generally about interview protocol, including that she asked the child witness to tell the truth, a witness may not give an improper opinion regarding a witness's credibility that implies the defendant is guilty.⁶³

This failure to object to clearly impermissible opinion testimony is manifest error of constitutional magnitude.⁶⁴ Manifest error is shown when there is “a nearly explicit statement by a witness that the witness believes the accusing victim.”⁶⁵ In this case, Ms. Arnold-Harms was allowed to give

⁶¹ State v. Alexander, 64 Wn. App. 147, 154, 822 P.2d 1250 (1992); State v. Warren, 134 Wn. App. 44, 52–53, 138 P.3d 1081, 1085 (2006), aff'd, 165 Wn.2d 17, 195 P.3d 940 (2008).

⁶² State v. Kirkman, 159 Wn.2d 918, 927, 155 P.3d 125, 130 (2007) *citing* State v. Demery, 144 Wn.2d 753, 759, 30 P.3d 1278 (2001) and State v. Black, 109 Wn.2d 336, 348, 745 P.2d 12 (1987).

⁶³ *See* Kirkman, *supra* 934–37 (description of interview protocol of asking child to tell the truth and eliciting promise to do so is not improper vouching).

⁶⁴ For an error to be manifest, under “manifest error affecting a constitutional right” exception to the rule that an appellate court may refuse to review unpreserved error, the defendant must show that the asserted error had practical and identifiable consequences at trial. RAP 2.5(a); State v. Grimes, 165 Wn. App. 172, 267 P.3d 454 (2011). An error is manifest if it has practical and identifiable consequences in the trial of the case, for the purpose of determining whether an appellate court will examine an alleged constitutional error for the first time on appeal; put another way, a “manifest error” is an error that is unmistakable, evident, or indisputable. RAP 2.5(a)(3). State v. Hayes, 165 Wn. App. 507, 265 P.3d 982 (2011).

⁶⁵ Kirkman, *supra*, at 936.

lengthy testimony about “suggestibility” – explaining that “kids ... can be more easily influenced by questioning and by interactions with other individuals.” RP 426. She explained how certain questioning avoids suggestibility and “you are going to get more *accurate information*.” RP 444 (emphasis added).

Ms. Arnold-Harms also explained the term “coaching” saying “coaching refers to the concern that the child is making a *false allegation* because they are being instructed to do so by another individual.” RP 450 (emphasis added).

The prosecutor’s “expert” was then allowed to testify, in response to a direct question from the prosecutor, that she did not have any concern for suggestibility or coaching during A.C.’s interview. RP 476. This, of course, was an explicit statement regarding the accuracy and truthfulness of A.C.’s accusations and is clear manifest error of constitutional magnitude, despite counsel’s failure to object to such improper opinion testimony.

3. Failing to Object to Prosecutorial Misconduct in Closing Argument

The very same prosecutor that prosecuted Mr. Domingo-Cornelio at trial has been reversed in this Court for prosecutorial misconduct during closing argument for using the exact same phrases as she used in Mr. Domingo-Cornelio’s closing argument.

In State v. Thierry, 190 Wn. App. 680, 360 P.3d 940 (2015), this same prosecutor, in speaking about the difference between direct and circumstantial evidence, claimed that “direct evidence of the acts themselves... is not required and, if it were, the State could never prosecute any of these types of cases.” She went on to say:

if the law required more, if the law required anything, something, anything beyond the testimony of a child, the child’s words, [JT’s] words, those instructions would tell you that, and there is no instruction that says you need something else. And again, *if that was required, the State could rarely, if ever, prosecute these types of crimes* because people don’t rape children in front of other people, and often because children wait to tell.

Id. at 685 (emphasis in opinion).

The defense attorney did not object. In the State’s rebuttal argument, she brought up the policy argument again, claiming “[Defense counsel wants you to basically disregard everything that [JT] has said ...” because he is a child. In response, she argued “if that argument has any merit then the State may as well just give up prosecuting these cases, and the law might as well say that ‘the word of a child is not enough.’” Id. at 688 (emphasis in opinion). At that point, Thierry’s defense attorney objected and stated that the prosecutor was fueling the passion and prejudice of the jury. Id.

The Court found that any argument that exhorts the jury to send a message to society about the general problem of child sexual abuse is

improper because it inflames the passions and prejudices of the jury.⁶⁶ The Court thus found that this prosecutor's policy arguments were clearly improper. Id. at 692. The Court also found there was incurable prejudice because the argument went to the key issue of the case: whether the jury should believe JT's accusations. Id. at 693. Inconsistencies among JT's statements only added to the likely prejudice of the prosecutor's closing argument. Id. The prosecutor's remarks thus "created a substantial risk that the jury decided to credit JT's testimony for improper reasons." Id. at 694. The same is true here.

During closing argument in Mr. Domingo-Cornelio's trial, the same deputy prosecuting attorney argued that to prove the acts occurred beyond a reasonable doubt, all that was required was A.C.'s testimony. RP 674. But then, the prosecutor went on to say:

Can you imagine a system where we did require something else? You have heard the testimony. Also apply your common sense and experience here. Kids often don't tell about abuse that they have suffered until well after it's over and done with, or has been happening for years. It could be a period of months, but more often than not, it's years later, if they ever tell.

RP 674.

The prosecutor went on to argue that: "Most of the time, 95 percent of the time, there is no physical findings. And according to the law, our law

⁶⁶ Id. citing State v. Bautista-Caldera, 56 Wn. App. 186, 195, 783 P.2d 116 (1989).

here in Washington State, that doesn't matter. You don't need that additional evidence." RP 675.

Then, the deputy prosecutor went back to her public policy argument:

It doesn't matter that these things don't exist in this case. In such a system, most children would have to be told, sorry we can't prosecute your case, we can't hold your abuser responsible because there is nothing to corroborate what you are telling us and no one is going to believe a child. We don't have a system like that. That's not how our system works. A child telling you what happened to them is evidence and it's enough.

If more was required, we couldn't hold the majority of abusers responsible, including this abuser. We couldn't hold this defendant responsible for what he did to Alejandra.

RP 675.

In State v. Smiley, 195 Wn. App. 185 (2016), Division I again reviewed the same closing argument that is nearly verbatim to the closing arguments from State v. Thierry and Mr. Domingo-Cornelio's case. The Court agreed with Division II and held that the argument was misconduct, explaining "a proper argument stays within the bounds of the evidence and the instructions in the case at hand." Id. at 194. Further, "it is unnecessary to explain why the law is the way it is" and "such explanations tend to lead into policy-based arguments that divert the jury from its fact-finding function." Id. "Jurors should not be made to feel responsible for ensuring

that the criminal justice system is effective in protecting children.” Id. at 195. However, that court declined to reverse because Mr. Smiley’s attorney did not object. Further, that court found that there was no prejudice because Mr. Smiley’s own attorney picked up the theme in his own closing argument and made it his own. Id. That did not happen here.

Here, it is clear from review of the prior cases finding the exact same closing argument was improper, that the prosecutor’s misconduct in Mr. Domingo-Cornelio’s case is so flagrant and ill-intentioned that an instruction could not have cured the resulting prejudice.⁶⁷ As this Court found previously in Thierry, such misconduct is especially flagrant when “the outcome of the case depends entirely on whether the jury chose to believe [alleged victim’s] accusations or [the defendant’s] denial.” Thierry at 694. “The bell once rung cannot be unring” with a curative instruction.⁶⁸

The case against Mr. Domingo-Cornelio turned on witness credibility. A.C. had motive and reason to point the finger on someone other than her father. The allegation came out the day after a contentious divorce trial and in the midst of A.C.’s mother continuing to accuse A.C.’s father of molesting her. The jury was forced to decide whether to believe

⁶⁷ See State v. Emery, 174 Wn.2d 741, 760-61, 278 P.3d 653 (2012).

⁶⁸ State v. Powell, 62 Wn. App. 914, 919, 916 P.2d 86 (1991), review denied 118 Wn.2d 1013, 824 P.2d 491 (1992).

A.C. or not. Her testimony and her credibility were the state's only evidence. Because of the particular facts in this case, and because Division II has already held that the *exact same closing argument by the exact same prosecutor* was so prejudicial that a jury instruction could not cure the misconduct, this court should reverse and remand for a new trial.

E. THIS COURT SHOULD REMAND FOR A NEW SENTENCING HEARING BECAUSE THERE HAS BEEN A SIGNIFICANT CHANGE IN THE LAW THAT APPLIES RETROACTIVELY AND MATERIAL FACTS EXIST WHICH HAVE NOT BEEN PREVIOUSLY PRESENTED AND HEARD, WHICH REQUIRES VACATION OF MR. DOMINGO-CORNELIO'S SENTENCE UNDER RAP 16.4

The Supreme Court's recent decisions explicitly hold that the Eighth Amendment to the United States Constitution compels us to recognize that children are different. Since Mr. Domingo-Cornelio's sentencing hearing and appellate brief were filed, both the United States Supreme Court and Washington State Supreme Court have issued decisions creating a change in the law finding youth is a mitigating factor at sentencing due to recent developments in scientific knowledge regarding adolescent brain development.⁶⁹ The United States Supreme Court held that "children are constitutionally different from adults for purposes of sentencing."⁷⁰

⁶⁹ State v. O'Dell, 183 Wn.2d 680, 692, 358 P. 3d 359, 365 (2015); State v. Ronquillo, 190 Wn. App. 765, 361 P.3d 779 (2015); Montgomery v. Louisiana, 136 S. Ct. 718, 193 L.Ed.2d 599 (2016); and State v. Houston-Sconiers, 188 Wn.2d. 1, 391 P.3d 409 (2017).

⁷⁰ Miller v. Alabama, 567 U.S. 460, 471, 132 S. Ct. 2455, 183 L.Ed.2d 407 (2012) *citing* Roper v. Simmons, 543 U.S. 551, 125 S. Ct. 1183, 161 L.Ed.2d 1 (2005), and Graham v. Florida, 560 U.S. 48, 130 S. Ct. 2011, 176 L.Ed.2d 825 (2010).

“Because juveniles have diminished culpability and greater prospects for reform ... they are less deserving of the most severe punishments.” First, children have a “lack of maturity and an underdeveloped sense of responsibility, leading to recklessness, impulsivity, and heedless risk-taking.... Second, children are more vulnerable... to negative influences and outside pressures, including from their family and peers; they have limited control over their own environment and lack the ability to extricate themselves from horrific crime-producing settings.... And third, a child’s character is not as “well formed” as an adult’s; his traits are less fixed and his actions less likely to be evidence of irretrievable depravity.”⁷¹

“Following the decision in Roper, the Washington State legislature found, in 2005, when amending RCW 9.94A.540, that “adolescent brains, and thus adolescent intellectual and emotional capabilities, differ significantly from those of mature adults. It is appropriate to take these differences into consideration, when sentencing juveniles tried as adults.”⁷²

“In Miller, Roper, and Graham, the Court recognized that these neurological differences make young offenders, in general, less culpable for their crimes.”⁷³ In Roper, the court explained “[t]he qualities that distinguish juveniles from adults do not disappear when an individual turns 18 [just as] some under 18 have already attained a level of maturity some adults will never reach.”⁷⁴

⁷¹ Miller, 132 S. Ct. at 2464.

⁷² State v. O’Dell, 183 Wn.2d 680, 692, 358 P. 3d 359, 365 (2015).

⁷³ Id.

⁷⁴ 543 U.S. at 574 (2005).

State v. O'Dell held that Courts should consider youth as a mitigating factor in sentencing for persons who committed their crimes as a juvenile but are convicted as an adult in holding “that a defendant’s youthfulness can support an exceptional sentence below the standard range applicable to an adult felony defendant, and that the sentencing court must exercise its discretion to decide when that is.”⁷⁵ “O'Dell expanded youthful defendants’ ability to argue for an exceptional sentence, and was a significant change in the law.”⁷⁶ Therefore, this new change in the law should apply retroactively. Id. at 6.

Scientific studies exploring adolescent brain development have found the adolescent brain is not fully developed until a person reaches early or mid-20s.⁷⁷ “The dorsal lateral prefrontal cortex, important for controlling impulses, is among the latest brain regions to mature without reaching adult dimensions until the early 20s.”⁷⁸ “Until full neurological maturity, young people in general have less ability to control their emotions, clearly identify consequences, and make reasoned decisions than they will when they enter their late twenties and beyond.” Id. We now know that

⁷⁵ O'Dell, 183 Wn.2d at 698-699.

⁷⁶ In the Matter of the Pers. Restraint of Kevin Light-Roth, 75129-8-I, 2017 WL 3473644, at (Division I, Aug. 14, 2017).

⁷⁷ O'Dell, 183 Wn.2d 680, 695 (2015).

⁷⁸ Id., at 692.

young people have “diminished culpability and greater prospects for reform.”

Recently, this Court addressed what a sentencing court must consider in regard to an offender’s youth in State v. Solis-Diaz, stating:

It is less supportable to conclude that even a heinous crime committed by a juvenile is evidence of irretrievably depraved character.” [Roper, 543 U.S. at 57.] These scientific findings and their endorsement by the high courts of both the United States and Washington compel the same conclusion: a sentencing court’s evaluation of a particular juvenile offender’s circumstances must at least extend to an individualized assessment of each of these potential effects of youth. O’Dell, 183 Wn. 2d at 695-96. Against this background, the sentencing court must consider whether youth diminished Solis-Diaz’s culpability and make an individualized determination whether his “capacity to appreciate the wrongfulness of his conduct or [to] conform that conduct to the requirements of the law” was meaningfully impaired.⁷⁹

Mr. Domingo-Cornelio’s sentencing hearing was in September 2014; his brief in support of direct appeal was filed in April 2015. Our Supreme Court issued O’Dell in August 2015. In October of 2015, the Washington State Supreme Court held that Miller applied to sentences that were equivalent to life sentences as well as actual life without parole sentences.⁸⁰ Then, the United States Supreme Court made the Miller doctrine retroactive in cases on collateral review in a decision in January

⁷⁹ State v. Solis-Diaz, 194 Wn. App. 129, 140-41, 376 P.3d 458 (2016).

⁸⁰ See State v. Ronquillo, 190 Wn. App. 765, 361 P.3d 779 (2015).

2016.⁸¹ Just this year, the Washington State Supreme Court expanded on previous cases when it held “in accordance with Miller, we hold that sentencing courts must have complete discretion to consider mitigating circumstances associated with the youth of any juvenile defendant, even in the adult criminal justice system, regardless of whether the juvenile is there following a decline hearing or not.”⁸² The Court then went on to conclude that “trial courts **must consider mitigating qualities of youth at sentencing** and must have discretion to impose any sentence below the otherwise applicable SRA range and/or sentence enhancements.”⁸³ Finally, just two weeks ago, Division I held that O’Dell (and progeny) is a significant change in the law that applies retroactively.⁸⁴ Given the significant change in the law that should be applied retroactively, Mr. Domingo-Cornelio’s case should be remanded for a new sentencing hearing.⁸⁵

⁸¹ See Montgomery v. Louisiana, 136 S. Ct. 718, 193 L.Ed.2d 599 (2016) (“Miller’s prohibition on mandatory life without parole for juvenile offenders announced a new substantive rule that, under the Constitution, is retroactive in cases on state collateral review.”)

⁸² State v. Houston-Sconiers, 188 Wn.2d 1, 391 P.3d 409 (2017).

⁸³ Houston-Sconiers, 188 Wn.2d at 17 (emphasis added).

⁸⁴ In the Matter of the Pers. Restraint of Kevin Light-Roth, *supra*.

⁸⁵ See O’Dell, 183 Wn. 2d 680 (2015), Ronquillo, 190 Wn. App. 765 (2015), Montgomery v. Louisiana, 136 S.Ct. 718 (2016), Houston-Sconiers, 188 Wn.2d 1 (2017); Light-Roth, *supra*.

The Washington State Sentencing Guidelines and Sentencing Reform Act define “offender” as anyone age 18 or above. This is an absolute rule. It provides for the same sentencing laws for any offender tried as an adult. The Washington State Supreme Court held in O’Dell that this bright-line statutory rule cannot be applied absolutely.⁸⁶

Mr. Domingo-Cornelio was sentenced as an adult, even though the alleged offenses occurred when he was only 14 years old, not because he was declined but because he was simply not charged until after his 18th birthday. Had Mr. Domingo-Cornelio been convicted of the exact same charges in juvenile court, he would have been facing a standard range of 103 to 129 weeks on Rape of a Child in the First Degree, and 15-36 weeks on each of the Child Molestation in the First Degree charges, for a total standard range of 148 to 237 weeks.⁸⁷ That means his maximum standard range sentence would have been just over four and a half years. Instead, he is serving a twenty-year sentence, almost five times his maximum possible sentence as a juvenile. The differences in the Juvenile Sentencing Act and the Adult Sentencing Guidelines make clear that youth should be sentenced differently than adults. This drastic difference in sentencing schemes should

⁸⁶ O’Dell, 183 Wn.2d 680.

⁸⁷ See RCW 13.40.180.

have been presented to the judge in support of an exceptional sentence below the standard sentencing range.

Because Mr. Domingo-Cornelio's age at the time of the alleged offense was not presented as a basis for imposition of an exceptional sentence below the standard sentencing range, and because youth as a mitigating factor was not considered by the sentencing court, this Court should remand for a new sentencing hearing where the Court can fully consider the changes in the law and determine the proper sentence.

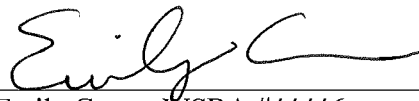
VI. CONCLUSION

For the foregoing reasons, this Court should grant this petition and grant Mr. Domingo-Cornelio a new trial, one in which he receives the effective assistance of counsel. At the very least, a new sentencing hearing is warranted because youth as a mitigating factor was never considered.

DATED this 30th day of August, 2017.

Respectfully submitted,

GAUSE LAW OFFICES, PLLC

A handwritten signature in cursive script, appearing to read "Emily Gause", written over a horizontal line.

Emily Gause, WSBA #44446
Attorney for Petitioner

VII. STATEMENT OF FINANCES

Pursuant to RAP 16.7(4), the court of appeals can waive the filing fee if the petitioner is indigent and submits a statement proving that indigence. Here, Mr. Domingo-Cornelio is indigent and will submit a statement proving such. Upon receipt of that statement, Mr. Domingo-Cornelio asks this court to waive the filing fee in this case.

VIII. OATH

I declare under penalty of perjury under the laws of the State of Washington that I am the attorney for the petitioner, that I have read the petition, know its contents, and I believe the petition is true.

DATED this August 30, 2017, in Seattle, WA.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Emily C", written over a horizontal line.

Emily M. Gause, WSBA #44446
Attorney for Petitioner

EXHIBIT A

**SUPERIOR COURT OF WASHINGTON
COUNTY OF PIERCE**

STATE OF WASHINGTON,

Plaintiff,

v.

ENDY DOMINGO CORNELIO,

Defendant.

NO. 13-1-02753-6

**TRANSCRIPT OF INTERVIEW
OF TIFFANY MARIE CROLL**

Present for Interview:	Interviewee	Tiffany Marie Croll
	Defense Attorney	Dave Shaw
	Defense Investigator	Glen Sukys
	Deputy Prosecutor	Kara Sanchez

Transcription by: Patti Wood
c/o 524 Tacoma Avenue South
Tacoma, WA 98402
(253)820-4429

1 **1 Cornelio, Endy 13-1-02753-6 – 38:33**

2 SHAW: Okay, ah, we are here on the 7th Floor of the County-City Building at, in
3 Tacoma, Washington, it is approximately 1:56 in the afternoon or 1356
4 hours, ah, we are gathered here in the matter of State of Washington v. Endy,
5 E-N-D-Y, Domingo, D-O-M-I-N-G-O, Cornelio, C-O-R-N-E-L-I-O, Cause
6 Number 13-1-02753-6. Present myself, Dave Shaw, Assigned Counsel
7 representing, ah, Endy Domingo Cornelio, ah, my Investigator Mr. Glen
8 Sukys, ah, the Deputy Prosecuting Attorney on this case is Kara Sanchez, K-
9 A-R-A S-A-N-C-H-E-Z, and the person we are interviewing at this time is
10 Tiffany, T-I-F-F-A-N-Y, is that correct?

11 CROLL: Yes.

12 SHAW: Marie, M-A-R-I-E, last name, Croll, (unintelligible) Croll, C-R-O-L-L.

13 CROLL: Yes.

14 SHAW: Is that correct? All right, thank you and may we record this Ms. Croll with
15 your permission?

16 CROLL: Yes.

17 SHAW: Thank you, ah, what is your date of birth please?

18 CROLL: 9/29/83.

19 SHAW: Where did you grow up Ms. Croll?

20 CROLL: In Washington.

21 SHAW: Okay in Tacoma area here?

1 CROLL: No, Vancouver, um . . . from Vancouver, Washington, back and forth, Forks,
2 Washington.
3 SHAW: Okay, when did you move to Tacoma?
4 CROLL: In two thousand . . . two . . . so . . .
5 SHAW: Okay.
6 CROLL: . . . (unintelligible).
7 SHAW: Ah, do you remember what month . . . approximately?
8 CROLL: I want to say November of 2002.
9 SHAW: Okay and you are the, ah, mother of, ah, Alejandra (Spelling?) Croll, is that
10 correct?
11 CROLL: Yes.
12 SHAW: Ad, ah, her date of birth is 11/9/03, is that correct?
13 CROLL: Yes.
14 SHAW: Okay, who is her father please?
15 CROLL: Jose Cornelio.
16 SHAW: Were you married to Jose Cornelio?
17 CROLL: I was.
18 SHAW: And was that divorce finalized some time ago?
19 CROLL: It was finalized in . . . October of 2012.
20 SHAW: Okay.
21 CROLL: We . . .

1 SHAW: So . . .

2 CROLL: . . . were separated . . . in two thousand . . . six, 2007.

3 SHAW: (Unintelligible).

4 CROLL: And, and . . .

5 SHAW: And remember use your (unintelligible) your high volume voice please if

6 you would . . . where does, ah, Alejandra, am I pronouncing her name

7 correctly?

8 CROLL: Yes.

9 SHAW: Okay, where does she, ah, live?

10 CROLL: She lives with Jose right now.

11 SHAW: Okay, with her natural father?

12 CROLL: Yes.

13 SHAW: Is that correct? Okay . . . and . . . when you separated, ah, some six years

14 before the, in '06 or so.

15 CROLL: Correct.

16 SHAW: Six years before the divorce was finalized . . . with whom was, ah . . .

17 Alejandra living most of the time?

18 CROLL: With me.

19 SHAW: Okay, would she have, ah, frequent visits with, ah, her father, Jose?

20 CROLL: When I was still in Washington, she would see him every other weekend,

21 just her . . . and then . . . when I moved to Oregon, which was two thousand

1 . . . the end of 2007 and I was down there for like eight months, she would
2 come up . . . once a month and stay like four or five days with him.

3 SHAW: Okay.

4 CROLL: And then when I moved in 2009 . . . we lived with him for like four months
5 and then . . . I moved up to Redmond, Washington, and then he would take
6 . . . both of the girls every other weekend, after that.

7 SHAW: Okay, ah . . . were other children living in . . . Jose's house or residence at
8 this time?

9 CROLL: No.

10 SHAW: So when Alejandra would come visit him that would be the only child there?

11 CROLL: Um, as far as I know but he had nephews that would go over there a lot and
12 they were all under age so . . . I don't know if they were there on the
13 weekends.

14 SHAW: Okay, they were minors anyway there?

15 CROLL: Yeah.

16 SHAW: So under eighteen?

17 CROLL: Yes.

18 SHAW: Okay . . . now you know why you're here today, correct?

19 CROLL: Yes.

20 SHAW: And why is that?

21 CROLL: Um . . . cause some . . . Alejandra said some bad stuff had happened to her.

1 SHAW: Okay . . . who has Alejandra . . . ah . . . said did bad things to her?

2 CROLL: Endy her cousin, Endy Domingo.

3 SHAW: Has she said anyone else has done bad things to her?

4 CROLL: No.

5 SHAW: Okay . . . now you . . . first learned of this . . . or these allegations when

6 please?

7 CROLL: Um . . . I want to say . . . Oct . . . maybe the end of October of 2012,

8 beginning of November 2012.

9 SHAW: And is there anything that, ah . . . makes that besides the allegations

10 themselves anything happening around that time that helps you remember

11 that?

12 CROLL: Um, yes, it was my sister did not show up for court . . . and she was telling

13 me why and my daughter over heard me and thought I was talking about her.

14 SHAW: What . . .

15 CROLL: Ale . . .

16 SHAW: . . . kind of . . .

17 CROLL: . . . jan, she . . .

18 SHAW: Excuse . . .

19 CROLL: My . . .

20 SHAW: . . . me . . .

21 CROLL: . . . sister . . .

1 SHAW: . . . what kind . . .

2 CROLL: . . . was . . .

3 SHAW: . . . court?

4 CROLL: Ah, my divorce court.

5 SHAW: Okay.

6 CROLL: So I was talking to my sister asking her why she didn't show up for court

7 cause she was supposed to testify . . . and she, I was outside on the phone . . .

8 and . . . my young or Alejandra was lis, listening to me through the door and

9 she thought I was talking about her . . . she thought I was talking about her,

10 she thought . . .

11 SHAW: Okay.

12 CROLL: . . . and . . .

13 SHAW: What were you saying to your sister and what is your sister's name please?

14 CROLL: Paige (spelling?).

15 SHAW: Okay . . . ah, last name please?

16 CROLL: Croll, C . . .

17 SHAW: Okay.

18 CROLL: . . . R-O-L-L.

19 SHAW: And why did your sister need to be at your court hearing and this was about

20 your divorce is that correct?

21 CROLL: Yeah, it was . . . for the child, child custody.

1 SHAW: Okay.

2 CROLL: I wanted her to testify.

3 SHAW: And, ah . . .

4 CROLL: Um . . .

5 SHAW: . . . what would she had testified to?

6 CROLL: She lived with me and Jose . . .

7 SHAW: Okay.

8 CROLL: . . . so she witnessed how he treated the kids and me and stuff.

9 SHAW: Okay.

10 CROLL: So I wanted her to testify . . . for that but when I had talked to her . . . we

11 were talking about, she told me why she didn't show up for court.

12 SHAW: And why was that please?

13 CROLL: Um . . . she told me that she was . . . sleeping with my ex-husband pretty

14 much the whole time we were married.

15 SHAW: Okay.

16 CROLL: And I told her she needed to call the police and I actually had called the

17 police and they said I couldn't do anything cause she was over age and she

18 had to do something . . . and when I was talking to her I was telling her she

19 needed to do this because . . . we already suspected . . . stuff happened to my

20 daughter but there was no proof, we took her into hospitals, doctors and

1 questioned her and she denied everything, um, or wouldn't admit to
2 anything.

3 SHAW: This is Alejandra?

4 CROLL: Alejandra I said, what if . . . you know, this happened to my daughter, you
5 were under age, she was thirteen, my sister at the time . . . and . . . I, I was
6 just like there's other dau, other girls living in the home now besides my
7 daughters, one of them is thirteen, it could happen to her so you need to do
8 something, I can't do anything cause you're over age and then . . . my
9 daughter thought I was talking about her and she said it wasn't my dad, it
10 was Endy.

11 SHAW: Now . . . you have spoken with . . . a few authorities about these allegations,
12 correct?

13 CROLL: Um . . . what do you mean?

14 SHAW: Well in order to get this prosecution started, you must have contacted . . .

15 CROLL: Oh, I called . . .

16 SHAW: . . . (unintelligible) . . .

17 CROLL: . . . the police.

18 SHAW: Okay.

19 CROLL: Yeah.

20 SHAW: So you spoke to the police briefly, who else did you speak to?

1 CROLL: Um, Alejandra's therapist, ah, she graduated but her name is Amber
2 Bradford.
3 SHAW: (Unintelligible) . . .
4 CROLL: Amber, Amber.
5 SHAW: Amber Bradford, okay, was that here in Tacoma?
6 CROLL: Yes.
7 SHAW: Okay . . . and you probably spoke to Ms. Carrie Arnold-Harms (spelling?)?
8 CROLL: Um, I don't . . . there when we took her in for her first interview there was a
9 few people there, I don't remember.
10 SHAW: Okay.
11 CROLL: Their names.
12 SHAW: Okay. How many, ah, interviews, ah, did Alejandra go through . . . if you . . .
13 CROLL: Just . . .
14 SHAW: . . . can remember?
15 CROLL: Just . . . I think just one before she started her therapy . . . and then today.
16 SHAW: Okay . . . when you were outside of the courtroom or when you were
17 speaking to your sister on the day of the custody hearing and . .
18 CROLL: Oh . . .
19 SHAW: . . . you're . . .
20 CROLL: . . . it was a couple days after . . . it wasn't . . . it was after co, court . . .
21 SHAW: Okay.

1 CROLL: . . . because . . . (unintelligible) I was upset that my . . . ex got custody.
2 SHAW: Okay.
3 CROLL: And I was like why weren't you there to support me and (unintelligible).
4 SHAW: Where . . . were you physically please when you made this call to your
5 sister?
6 CROLL: I . . .
7 SHAW: At home?
8 CROLL: . . . was at home, yes.
9 SHAW: Okay . . . and you thought that Alejandra was in another room not hearing?
10 CROLL: Well I was outside . . .
11 SHAW: Okay.
12 CROLL: . . . and they were supposed to be downstairs a split level house and I
13 was . . .
14 SHAW: Okay.
15 CROLL: . . . like in the middle of the house and they were downstairs watching a
16 movie.
17 SHAW: Okay . . . and somehow she came up and over heard your (unintelligible)?
18 CROLL: Yeah, she was like sitting at the door.
19 SHAW: Okay and how old was Alejandra at this time please, when she was hearing
20 you . . . talk to your sister about your disappointment over the custody?
21 CROLL: She was . . . eight or just turned nine.

1 SHAW: And that would make her about ten now, is that correct?

2 CROLL: She's ten, yes.

3 SHAW: Okay . . . now . . . did you have any reason to be concerned about Alejandra

4 before . . . she mentioned her cousin Endy?

5 CROLL: Ah . . .

6 SHAW: As far as perhaps her being sexual abused or improperly touched?

7 CROLL: Yes.

8 SHAW: Okay and how did that, how did those concerns of yours about your daughter

9 arise please?

10 CROLL: Um . . . well when she was young like . . . three years old she would go, she

11 would find, she would get closer to men then she would women . . . she

12 would st, get on their lap, straddle their legs, um . . . only wanted to be with

13 her dad . . . um . . . for the (unintelligible), for a long time and one of the

14 reasons why . . . I left Jose was because of the, their relationship, I didn't

15 think it was right but there was no proof that anything had happened so . . .

16 um, I had thought Jose, her father . . . was doing stuff to her.

17 SHAW: And why did you think that?

18 CROLL: Just because of their relationship, when he would take a shower, she would

19 go in there with him.

20 SHAW: Would he invite her or would she just assume she . . .

21 CROLL: She wanted . . .

1 SHAW: . . . was . . .

2 CROLL: . . . to go . . .

3 SHAW: . . . invited?

4 CROLL: . . . in there and it was okay with him.

5 SHAW: And how old was she . . . ah, during these periods please?

6 CROLL: Um, one . . . to five, ah . . . I want to say, she, she, he stopped letting her

7 sleep in his bed . . . maybe three years ago.

8 SHAW: And you had, ah, split from him for some time by the time this was

9 occurring, correct?

10 CROLL: Yeah.

11 SHAW: When did, ah, Jose stop allowing her into the shower with him please?

12 CROLL: Um . . . he denied, he den, he said he never took showers with her, she said

13 that.

14 SHAW: Okay.

15 CROLL: But, um . . .

16 SHAW: Did you observe this or see . . . any indication that they had been showering

17 together?

18 CROLL: No (unintelligible) just she would say that . . . she when, cause they lived

19 with me and she, when I would give her a bath, she'd be like, I don't want to

20 take a bath, I want to take a shower with my dad and . . . you know she . . .

21 SHAW: (Unintelligible).

1 CROLL: . . . wanted to be with her dad (unintelligible).

2 SHAW: And to your knowledge, when did these showers cease please?

3 CROLL: Um, when he got a girlfriend . . . so she, my daughter had made comments,
4 her dad doesn't love her anymore because he has a girlfriend.

5 SHAW: So the girlfriend would, had moved in?

6 CROLL: They, no, not at this time, they were just on the weekends he would have
7 them, he was over at her house . . . on the weekends, cause he worked during
8 the week so she had her place . . .

9 SHAW: Okay.

10 CROLL: . . . he had his place and . . . she, she had a (unintelligible), he lives in a little
11 two bedroom trailer and she has five kids so . . . it was bigger to go to her
12 place.

13 SHAW: Are they together now to your knowledge?

14 CROLL: Um, they just got back together I guess.

15 SHAW: Okay . . . did . . . Alejandra inform you that, ah, ah . . . now that he has a
16 girlfriend, he doesn't love me anymore? Is that . . .

17 CROLL: Um, she's . . .

18 SHAW: . . . (unintelligible) . . .

19 CROLL: . . . she's made comments not to me, like I've questioned her a lot . . . about
20 her relationship with her dad without being direct and . . .

21 SHAW: Um-huh.

1 CROLL: And she won't . . . she just, I don't know, she told my youngest daughter . . .
2 he's not gonna marry her and he's not gonna marry nobody like you, he's
3 gonna marry somebody like me, like little stuff like that.
4 SHAW: Ah, ah, he's not gonna marry somebody like you being the person he's talk,
5 the person she's . . .
6 CROLL: Well he's . . .
7 SHAW: . . . talking . . .
8 CROLL: . . . say . . .
9 SHAW: . . . to?
10 CROLL: No, my, my youngest daughter.
11 SHAW: Okay.
12 CROLL: Her as in his girlfriend, you as in my youngest daughter.
13 SHAW: Okay.
14 CROLL: And . . .
15 SHAW: Ah . . . did Alejandra tell you that, ah, he doesn't let me take showers with
16 him anymore or anything like that?
17 CROLL: Ah, no.
18 SHAW: Okay.
19 CROLL: She says she doesn't take showers with him anymore.
20 SHAW: (Unintelligible), ah, how much education do you have please Ms. Croll?
21 CROLL: Um . . .

1 SHAW: Formal education?

2 CROLL: Oh, I dropped out in the ninth grade.

3 SHAW: Okay, have you, ah, taken any, ah, do you have a GED?

4 CROLL: No, not yet.

5 SHAW: Okay . . . ah, any post high school . . . classes or professional training of any

6 kind?

7 CROLL: Um . . . I (unintelligible) . . .

8 SHAW: Of any . . .

9 CROLL: . . . no, not . . .

10 SHAW: . . . kind (unintelligible)?

11 CROLL: . . . really.

12 SHAW: Okay.

13 CROLL: Well . . .

14 SHAW: I mean to be a beautician or be a, a . . . receptionist or anything along those

15 lines?

16 CROLL: I have, I have experience as a receptionist.

17 SHAW: Okay.

18 CROLL: And like . . . I was fork lift certified and . . .

19 SHAW: There you go (unintelligible).

20 CROLL: Worked for Microsoft but . . . I didn't take any college classes . . .

21 SHAW: Okay.

1 CROLL: . . . (unintelligible).

2 SHAW: Ah . . . when you . . . were informed that your daughter was showering with

3 Jose . . . her father, ah, had you been separated from him by this time?

4 CROLL: Yes.

5 SHAW: Okay, did you . . . notify any authorities at this time?

6 CROLL: Um . . . well . . . before I had separated him I . . . had my daughter taken

7 into, or I took my daughter into the clinic and had her checked, um.

8 SHAW: And why did you do that please?

9 CROLL: Because she would have like yeast infections.

10 SHAW: Okay.

11 CROLL: And . . . she always had yeast infections, every, and then after we had

12 separated she'd always have yeast infections or bladder infections, there was

13 a couple times . . . she had blood in her underwear and the doctors said it

14 was . . . because she's not cleaning herself and she's . . . getting a rash and

15 its getting irritated.

16 SHAW: All right.

17 CROLL: And she's too young to be questioned.

18 SHAW: Besides the lack of hygiene, is that what this basically was or unsanitary . . .

19 CROLL: That's what . . .

20 SHAW: . . . conditions?

21 CROLL: . . . they said it was (unintelligible).

1 SHAW: Okay . . . ah . . . besides that explanation by the doctors, ah, and your
2 concerns about whether or not Jose was abusing her, did you have any other
3 concerns about Alejandra at that time?
4 CROLL: Well she, um . . . started messing with her younger sister . . . and in two
5 thousand . . . nine, right before we moved back with her father, she . . . was
6 . . . doing stuff to my cousin's daughters that are her same age.
7 SHAW: What kind of things . . .
8 CROLL: Boyfriend . . .
9 SHAW: . . . was she doing?
10 CROLL: . . . and girlfriend, um . . . my cousin was really upset with me and didn't tell
11 me a whole lot . . . they were playing boyfriend and girlfriend.
12 SHAW: Okay.
13 CROLL: And they had their clothes off.
14 SHAW: So this would, Alejandra would have been . . . at this age, ah, or at that time,
15 what age please?
16 CROLL: Five.
17 SHAW: Okay.
18 CROLL: Six . . . no five.
19 SHAW: Ah and this was your cousin who was very angry at you?
20 CROLL: Um-huh.
21 SHAW: That's a yes, I assume?

1 CROLL: Yes, sorry.

2 SHAW: It's okay, you're not the first one to do that I assure you . . . does this cousin

3 allow Alejandra to see her children any . . . nowadays?

4 CROLL: Um, they see each other at family gatherings, they live down in Vancouver,

5 Washington so it's . . . it's not like we just run into them.

6 SHAW: Okay.

7 CROLL: So maybe once a year.

8 SHAW: Okay . . . ah . . . how is . . . Alejandra doing in school?

9 CROLL: Um . . . since she's been with her dad not very well.

10 SHAW: What . . .

11 CROLL: (Unintelligible) . . .

12 SHAW: . . . grade is she in please?

13 CROLL: She's in fourth grade.

14 SHAW: Okay, and she just turned ten, right?

15 CROLL: (Unintelligible) yes.

16 SHAW: That's, ah, age appropriate isn't it?

17 CROLL: To . . .

18 SHAW: To be in fourth grade, age ten is common, turning from nine to ten

19 (unintelligible) . . .

20 CROLL: Oh, yes.

21 SHAW: Right? So has she been held back in school?

1 CROLL: No.

2 SHAW: You, ah, said that . . . she had one interview and then she, ah, for this matter
3 and then she got into therapy, is that right?

4 CROLL: Yes.

5 SHAW: Ah, is she seeing a different therapist then Amber Bradford nowadays?

6 CROLL: No.

7 SHAW: Is she in any therapy now?

8 CROLL: Um, she was referred but no.

9 SHAW: Okay, who referred her?

10 CROLL: Amber.

11 SHAW: Ah, why isn't she in further therapy?

12 CROLL: Um, her dad has custody of her and doesn't believe she needs it.

13 SHAW: Okay, does her dad have a, a health plan that would cover that to your
14 knowledge?

15 CROLL: Um, they applied, they applied through the State, um, I don't know why he
16 would be denied . . . but he also has it through his job which . . . his boss
17 called me while they were in my care and . . . asked me what their
18 information, cause he was gonna put them on there, his medical . . . but . . . I
19 don't know, yeah, I don't know why they wouldn't have it.

20 SHAW: Where does Jose work?

21 CROLL: RDP Construction.

1 SHAW: Decent job?

2 CROLL: Yeah, he's been there for a long time.

3 SHAW: Is it union, do you know?

4 CROLL: No.

5 SHAW: Okay . . . ah . . . has Aleja, Alejandra, ah, (unintelligible) give her a
6 nickname?

7 CROLL: Ali (spelling?).

8 SHAW: Ali, okay . . . ah, does Ali have, ah, a reluctance to communicate with you or
9 she open with you?

10 CROLL: Um, she's . . . she's not very open with me, she's very private.

11 SHAW: Is she open with, ah, any other relatives?

12 CROLL: Um . . . not that I know of, her and her dad used to be really close . . . um . . .
13 not so much anymore because of the girlfriend.

14 SHAW: Okay . . . did Ali, ah, ever tell you . . . that her father did, ah, touch her
15 inappropriately?

16 CROLL: Um, no.

17 SHAW: Besides this, these showerings together, did she give any details?

18 CROLL: No.

19 SHAW: Okay . . . and . . . the first time you heard Endy's name mentioned is when
20 you were talking to your sister on the telephone?

21 CROLL: Yes.

1 SHAW: Did she then . . . did you . . . continue talking to her about it so she brought it
2 up . . . such as when, where, how, why, (unintelligible) the details?
3 CROLL: Yeah and she was . . . like mad at me . . . I don't think I was handling it very
4 well . . . so . . . when I was trying to ask her she kind of like shut down on
5 me.
6 SHAW: Okay . . . um . . .
7 CROLL: I found out more after our interview then . . . she really didn't tell me
8 anything except it wasn't her dad . . . and not to talk bad about her dad.
9 SHAW: Okay.
10 CROLL: And it was Endy . . . yeah, she, she did not re, not really go into detail at all.
11 SHAW: Okay, so that would have been in, ah, middle of October or so of last year,
12 2012, end of October . . .
13 CROLL: Yeah.
14 SHAW: . . . I think . . .
15 CROLL: And . . .
16 SHAW: . . . you said.
17 CROLL: . . . (unintelligible) . . .
18 SHAW: End of . . .
19 CROLL: . . . or the beginning . . .
20 SHAW: . . . October.
21 CROLL: . . . of November, yes.

1 SHAW: Okay . . . so she gave you no details, huh?

2 CROLL: Um, she said that they kissed and he made her touch her . . . or . . . he made

3 her touch him . . . and he would touch her.

4 SHAW: Okay . . . now . . . was that the last time you allowed Endy around your

5 daughter?

6 CROLL: That's the . . . well that's the last, they don't live with me and I don't hang

7 out with his family but that's not the last time she saw him.

8 SHAW: Okay, ah . . . did you take steps to . . . alert people that (unintelligible) . . .

9 CROLL: I . . .

10 SHAW: . . . that, that should not . . . occur again?

11 CROLL: Yeah, I contacted her dad after . . . we, um, met with the police . . . I . . . met

12 up with her father, Jose, and said . . . I do not want him around until I find

13 out what's really going on . . . and . . . he's taken her over there . . . I found

14 out.

15 SHAW: Okay, then let's get de, he . . .

16 CROLL: Jose . . .

17 SHAW: . . . being Jose?

18 CROLL: . . . took Alejandra and all the kids over to Margarita's which is Endy's

19 mother.

20 SHAW: Okay.

1 CROLL: Jose's sister . . . and Alejandra told me . . . and I . . . told him he was . . . um
2 . . . not supposed to be taking her over there until after everything is taken
3 care of . . . and . . . so when he would go over there, he would leave her in
4 the van, so she wasn't in the house while he was there . . . all the other kids
5 got to go inside but she would stay in the van.
6 SHAW: How long would she stay in the van?
7 CROLL: Hours.
8 SHAW: By herself?
9 CROLL: Yeah . . . she's (unintelligible) fallen asleep in the van, kids would come out
10 with dessert and when she didn't get any . . . Jose would be like it's your
11 fault.
12 SHAW: Before you . . . were first told of this at the end of October of 2012 . . . had
13 Alejandra, ah . . . told you that she . . . doesn't want to visit her dad . . .
14 because of Endy or anything like that that would alert you to . . . her
15 unhappiness at the situation . . .
16 CROLL: Not . . .
17 SHAW: . . . or her alarm at Endy?
18 CROLL: Not because of Endy, I mean she's said that before but not because, it had
19 nothing to do with Endy, it was because of . . . Jose's girlfriend.
20 SHAW: Okay . . . ah, what would she say please?
21 CROLL: Um . . . I hate her, I don't want to be there if she's there . . . she's rude.

1 SHAW: Ah, have you met this girlfriend before?

2 CROLL: Yes.

3 SHAW: Ah, would you agree with Ali's assessment of the situation?

4 CROLL: Um . . . yes . . . but I mean there's two sides to every . . .

5 SHAW: Right.

6 CROLL: . . . story.

7 SHAW: And I . . .

8 CROLL: (Unintelligible).

9 SHAW: . . . understand your situation too and it would, I'm not trying to . . . pour a

10 bunch of gasoline or your separation and divorce (unintelligible) I assure

11 you but, um . . . was she reluctant or refusing to go . . . to Jose or go back to

12 Jose for example after you . . . ah, after she saw you?

13 CROLL: Yeah, for a . . . awhile she threw fits and wouldn't get out of the car and . . .

14 SHAW: And was that because of the girlfriend she said?

15 CROLL: Yeah . . . um, I don't think it had anything to do with Endy but that was also

16 before I knew about Endy.

17 SHAW: Okay . . . to your knowledge during this time . . . did Endy ever drive her

18 back to your place or to your place for visits or was, was Endy ever . . . the

19 . . . source of her transportation here or there or . . .

20 CROLL: Not when she was in my care, no, not that I know of.

1 SHAW: Okay . . . to your knowledge did Endy . . . contact you or Jose . . . to try to be
2 with . . . Ali alone?

3 CROLL: No from, from what Alejandra has said, he would ask Jose when he would
4 be there on the weekends when she had if she could hang out . . . until she
5 fell asleep out in the living room . . . and Jose . . . and me too at the time
6 didn't think that would be a problem.

7 SHAW: Okay, was Jose (unintelligible) staying there at the time?

8 CROLL: Yes.

9 SHAW: Okay.

10 CROLL: He was there, it was Jose . . .

11 SHAW: Okay.

12 CROLL: . . . and the girls and him.

13 SHAW: When . . . Endy would . . . stay with Jose . . . ah, Jose was there . . . at the
14 same time, to your knowledge . . .

15 CROLL: Yes.

16 SHAW: . . . anyway? Okay.

17 CROLL: Um . . . Endy's mother, Margarita, used to babysit my girls . . . while . . .
18 Jose had them if he had to work, I don't know if there was any . . .
19 transportation with Endy during that time.

20 SHAW: Ah, is this the one I saw in the paperwork nicknamed Maygo (spelling)?

21 CROLL: Maago (spelling?), yes.

1 SHAW: Maago, they call her, okay, not Margo, Maago?

2 CROLL: Maago.

3 SHAW: Do the kids get along with, ah, Margarita all right?

4 CROLL: Yes.

5 SHAW: Ali as well?

6 CROLL: Yeah, I think so.

7 SHAW: Okay.

8 CROLL: I had gotten along with her well, well I got along with all of them.

9 SHAW: Okay . . . has Alejandra besides . . . these allegations made allegations

10 against anyone else . . .

11 CROLL: No.

12 SHAW: . . . regarding sexual abuse or improper touching?

13 CROLL: No.

14 SHAW: So if you suspected Jose that was . . . on your own you . . .

15 CROLL: Ah, what ah . . .

16 SHAW: . . . suspected?

17 CROLL: . . . (unintelligible) my mom pointed out little things, my grandma, my

18 grandma's the first one that said something and I was just like that's his first

19 kid they have they bond, I didn't . . . it wasn't until after she was like, they

20 were sleeping together and . . . he would go into the bathroom and be in

21 there for like two hours when he would get off of work and she would be in

1 there, she wouldn't come out . . . he wouldn't make her get out . . . ah, it was
2 just weird . . . and then when we moved away, you know she wanted to sleep
3 with her dad . . . (unintelligible) doesn't love anyone except her dad . . . I
4 was still kind of like you know when I would take her into the doctors, they
5 would say . . . there's nothing there, no forceful entry . . . you know so it was
6 just like, okay, well she's a daddy's girl . . . I was denial but then . . . she
7 would come back and there would be blood in her underwear, she said, she
8 didn't take a bath . . . and that's why or Jose said she didn't take a bath and
9 that's why . . . (unintelligible) . . . so I mean like I would think about it and
10 then . . . I would get her checked out or try to get somewhere . . . there, when
11 we were down in Oregon in two thousand, the end of 2007 . . . my mom was,
12 um . . . calling all these different kinds of people to see if we can get
13 Alejandra to talk to somebody and she was very . . . like private, she doesn't
14 like to talk, she doesn't like to tell her business . . . about anything to
15 anybody.
16 SHAW: What were . . .
17 CROLL: (Unintelligible).
18 SHAW: . . . the main concerns of your mom at this time?
19 CROLL: Um . . . (unintelligible) she would get on my step dad and start grinding on
20 his leg . . . sitting on, she would like make sure, he would put her on . . . the

1 side with both of her legs on the side and she will move over . . . to where
2 one leg was on each side and she would rock back and forth and . . .
3 SHAW: So she was straddling one of his legs?
4 CROLL: Yes (unintelligible) like and she always wanted to do that . . . with just men.
5 SHAW: Would she si, did you see this too or was this your mother reporting this?
6 CROLL: No, I saw it too.
7 SHAW: (Unintelligible).
8 CROLL: And I'm just like (unintelligible) . . .
9 SHAW: Would, would she say anything, ah . . .
10 CROLL: Alejandra?
11 SHAW: . . . about what, yeah, what . . .
12 CROLL: She would . . .
13 SHAW: . . . (unintelligible) . . .
14 CROLL: . . . just get . . . no.
15 SHAW: (Unintelligible).
16 CROLL: She would, she would get mad . . . (unintelligible).
17 SHAW: If she couldn't do this she would get mad?
18 CROLL: Well if we'd question her she would get mad.
19 SHAW: Okay.
20 CROLL: If we told her to stop doing that she would get mad.
21 SHAW: Okay and, ah, she, this was in 2007 or so you said?

1 CROLL: 2007, 8, yeah.

2 SHAW: So she was four or five years old at that time (unintelligible) . . .

3 CROLL: Yes.

4 SHAW: . . . okay . . . well it's been about a year I think since the authorities were
5 called on this matter, right?

6 CROLL: Yes.

7 SHAW: How has Alejandra been doing since that time?

8 CROLL: Um, she's been with her father most of the time but I think, I mean she's a
9 lot . . . hap, happier . . . when she's with me, it seems like her person, she's
10 opening up to me (unintelligible) about certain things, um . . . I think the
11 therapy has helped her a lot . . . but, um . . . yeah, she's not playing
12 boyfriend and girlfriend with anybody anymore (unintelligible).

13 SHAW: Ah, and she's . . . you expressed concerns about school, ah, but she's . . .
14 she's not flunking out is she, I mean?

15 CROLL: Um, I have not . . . I actually asked the school when I, if I was able to pick
16 up my youngest daughter in time if they could print out records because I
17 have not received copies of the report . . .

18 SHAW: Okay.

19 CROLL: . . . cards so I don't . . . I don't really know what their progress is this year.

20 SHAW: Well I hope we don't keep you . . . too late . . . do you talk about . . . these
21 allegations with Alejandra still?

1 CROLL: No.

2 SHAW: Do you make a point of not talking about them?

3 CROLL: Yeah, um . . . if I do I'll ask or like she'll say . . . um . . . they went to a party

4 and . . . they got a big family and they . . . like to have big parties and . . . the

5 kids love them and I'll just ask if her aunt was there and then I'll say we're

6 all the boys there and just right away she'll be like Endy wasn't . . . I'm like,

7 okay.

8 SHAW: Okay, ah, does she have age . . . appropriate friends?

9 CROLL: Um . . . she hangs out with the girls that live with her . . . um . . . there's a,

10 my youngest daughter is eight and then there's . . . a five year old . . . I want

11 to say she's five and then another ten year old . . . and . . . I want to say a

12 twelve year old and a fourteen year old at the house.

13 SHAW: Are there, is this at a trailer park?

14 CROLL: Yeah.

15 SHAW: Ah . . .

16 CROLL: In their trailer, it's Jose's girlfriend's daughters.

17 SHAW: Ah . . . does Jose let her . . . have friends outside of the trailer?

18 CROLL: Um . . . yeah, she, she has friends outside of the trailer.

19 SHAW: Does she have over nights at those friends or . . .

20 CROLL: No.

21 SHAW: No . . . does she do any after school activities?

1 CROLL: Um . . . right when we first . . . got our divorced finalized she was staying
2 after for an hour like every other day doing, um . . . like PE after school . . .
3 SHAW: Okay.
4 CROLL: With some other kids.
5 SHAW: And which school please?
6 CROLL: Karshner Elementary.
7 SHAW: In Puyallup.
8 CROLL: In Puyallup.
9 SHAW: Ah, is that down flat by the river there or . . .
10 CROLL: Yeah.
11 SHAW: Okay . . . big soccer field next to it, is that the one, ah . . .
12 CROLL: They have like a baseball field, a little tiny park.
13 SHAW: Okay, then maybe I must be thinking of a different one . . .
14 CROLL: Oh, yeah . . .
15 SHAW: . . . cause you'd know this . . .
16 CROLL: . . . that's more . . . towards Tacoma.
17 SHAW: Okay.
18 CROLL: So.
19 SHAW: All right, ah, Ms. Croll as far as these allegations go and what you . . . have
20 learned from any party, is there something I have not asked you this

1 afternoon that you think I should have and you think . . . Ms. Sanchez and I
2 should know?

3 CROLL: Um . . . well from what I heard from . . . Endy's side of the family another
4 family member that this is not the first time and I heard this after, this is not
5 the first time that . . . Endy has done this to . . . one of his relatives . . . um,
6 I . . . it could just be, you know, them talking . . .

7 SHAW: Okay.

8 CROLL: . . . but I heard that another one of . . . the cousins . . . I think it's a cousin or
9 its . . . Margarita's cousin's daughter, her mother tried to . . . um . . . press
10 charges, I don't know what she . . . tried to do but there was not enough
11 proof so they dropped it . . . and . . . um . . . Jose or Endy's aunt told me that
12 her niece, which is Endy's Uncle's daughter . . . so it would be his cousin
13 too . . . um . . . was also . . . (unintelligible) messed with by him . . . and I
14 think there's . . . going through the same stuff we're going through, I don't
15 talk to them, I don't . . .

16 SHAW: Okay.

17 CROLL: . . . know them, that's ah . . . on Endy's dad's side of the family, I only know
18 his mom's side of the family.

19 SHAW: Why is the family putting up with this if, if you know?

20 CROLL: Um . . . well as far as I know . . . he's no longer living at his mom's house
21 . . . and like his aunt the one that told me . . . um . . . she . . . won't let her

1 kids go over there even to see their aunt and uncle, Margarita and Jorje
2 (Spelling?), because of . . .
3 SHAW: Ah . . . how long have you known Endy?
4 CROLL: I've known him since . . . um . . . 2002.
5 SHAW: Okay.
6 CROLL: Used to come over and hang out all the time.
7 SHAW: And is that when you met Jose?
8 CROLL: Yes.
9 SHAW: Okay . . . okay, ah . . . we're gonna stop the tape, what time is it please?
10 SUKYS: 2:35 exactly.
11 SHAW: Okay, we're gonna . . .
12 **2 Cornelio, Endy 13-1-02753-6 – 0:14**
13 SHAW: Okay . . . tape recorders back on, ah, it is . . .
14 SUKYS: One minute after (unintelligible) so it's, ah, 2:36.
15 SHAW: 2:36 and that concludes this interview with Tiffany Marie Croll, thank you.
16 SUKYS: Okay, stopping tape.
17 *****END OF INTERVIEW*****
18

CERTIFICATION OF TRANSCRIPTION

State of Washington)
) ss.
County of Pierce)

I, Patricia Wood, declare under the penalty of perjury under the laws of the State of Washington that the following is true and correct to the best of my knowledge and belief.

I certify that I am over eighteen years of age and not a party to this action.

I prepared the foregoing transcript from a CD digital recording provided by the Department of Assigned Counsel of an interview of Tiffani Marie Croll in the above captioned and consists of the foregoing thirty-four (34) pages.

Dated at Tacoma, Washington on this 23rd day of December, 2013.



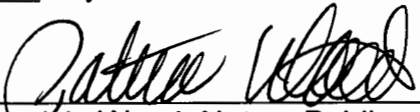

Patricia Wood, Notary Public
In and for the State of Washington
Residing at Pierce County, Washington
My commission expires: 04/14/2014

EXHIBIT B

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PIERCE

IN RE THE PERSONAL RESTRAINT

PETITION OF:

ENDY DOMINGO-CORNELIO,

Petitioner.

)
) SUPERIOR COURT #13-1-02753-6
)
) COURT OF APPEAL #46733-0-II
)
) DECLARATION OF KAREN SANDERSON
)
)
)
)
)
)

I, Karen Sanderson certify and declare as follows:

1. I am a licensed private investigator in Washington State. I have been licensed in Washington State for 13 years. Additionally, prior to obtaining my private license, I was a staff investigator at The Defender Association in Seattle Washington for 4 years. Over the course of my 17 years working as a criminal defense investigator, I have investigated hundreds of criminal cases. I have interviewed several thousand witnesses. I have worked on cases in all types of jurisdictions including federal, state, municipal, as well as cases outside of Washington including Oregon, California, Montana and Idaho. I have worked on 20 capital cases, both trial level and post-conviction. I was appointed by the Supreme Court of Washington to work on two post-conviction capital cases. I have investigated many dozens of post-conviction cases.

2. In November 2016, I was hired by Emily Gause to review the case materials on Endy Domingo's case and conduct investigation. I reviewed trial transcripts and a digital file containing discovery and other documents from Endy's trial attorney Dave Shaw.

Family members not interviewed by defense or law enforcement

3. I met with family members of Endy, who indicated that none of them were interviewed by Endy's original trial attorney, Dave Shaw, nor by law enforcement. Nobody had ever spoken with them about the allegations made by A.C. towards Endy. Endy's family members, including his siblings, parents, aunts and uncles all expressed concerns to me that Endy did not receive a fair trial and that Tiffany Croll had many motivations to urge her daughter A.C. to invent claims of abuse against Endy.
4. Endy's mother, Margarita Cornelio, (Jose Cornelio's sister and A.C.'s paternal aunt) reported that she had almost daily contact with A.C. starting when A.C. was approximately 2 years old, up until the age of 6. Both Jose and Tiffany would often drop A.C. off with Margarita to be cared for. Margarita and other family members reported that after charges were filed in the case and right up until the trial, Tiffany Croll continued to allow A.C. to come to the Cornelio-Domingo family home, despite the allegations reported. On several occasions before Endy's case went to trial but after the allegations were made, Tiffany brought both of her daughters over to Endy's house not knowing whether or not Endy might have been home at the time. Tiffany brought the girls over so that Endy's mother could baby sit them. Witnesses reported that A.C. did not appear nervous or upset being around Endy or being at Endy's house at any time. Tiffany also apparently did not seem concerned leaving

- her daughter at Endy's home when Endy could have actually been there, despite her own daughters allegations.
5. Other family members described how for years Tiffany accused A.C.'s natural father, Jose Cornelio of abusing A.C. They described how they knew Tiffany quite well and that she lied a lot. She threatened to call immigration on Jose. She took money from Jose's bank account. She lied in court during the family law case. She was motivated by money. Tiffany had strong feelings of hatred towards the family, despite her dependence on them for child care when it suited her.
 6. Family members stated that since Endy's case went to trial, they have often seen A.C., because A.C.'s father Jose has primary custody of her and still brings A.C. over to family get-togethers. According to family members, A.C. has never made any statements about Endy following his trial or referred to him in any negative way.
 7. Prior to the reporting of the alleged abuse, family members recall seeing A.C. around Endy on at least a bi-monthly basis. They recall never seeing A.C. appear nervous, uncomfortable or reluctant around Endy. She and Endy always engaged in a normal and friendly manner. She often came over to Endy's house so that Endy's mother could baby sit her. She never once complained about Endy or refused to go to Endy's house.
 8. Family members reported that Tiffany often stayed at different places with different people, bringing her daughters with her or leaving her daughters in the care of people she did not know or were suspect caregivers. She had a lot of boyfriends over the years when she and Jose were apart.
 9. Margarita reported that A.C. would often be angry with her mother Tiffany when she came over to Endy's house. A.C. would cry when she had to go back to her mom's house after a

visit. Tiffany would often leave the girls with someone for a day or two and often was late in picking them up, not fetching them until the middle of the night.

10. Margarita knew that Endy and her other son Edgar went to Tiffany's house to drink alcohol when they were only 12 or 14 years old. At the time that it occurred she did not know it was happening and only found out about it later. Margarita now suspects that Tiffany was sexually inappropriate with her sons. Margarita heard of an incident where Tiffany choked Endy and then he regained consciousness after some time of being unconscious.

Court documents reveal information not presented at trial by defense

11. Tiffany referred in court documents and statements several times that she suspected A.C.'s biological father Jose was sexually abusing A.C. Jose acknowledged that he allowed both girls to sleep in his bed after Tiffany and he split up. There were reports that A.C. was acting out sexually when she was very young. Tiffany accused Jose of being sexually inappropriate with Tiffany's younger sister who was 15 years old and Jose was 20 years old. It's likely therefore, that A.C. would have heard her mother make allegations of sexual abuse over the years. A.C. said in pre-trial statements that her mom was badgering her with the idea that her dad was abusing her and therefore, she finally told her mom that it was not her dad who was abusing her, but rather Endy. This disclosure of abuse occurred around the time that Tiffany and Jose were going through a divorce.
12. Although the trial defense attorney, Mr. Shaw referenced the divorce several times throughout the trial, he never suggested that he knew the actual dates of when events in the divorce proceedings occurred and why this might be significant in understanding the disclosure. Also, his file did not contain any court records indicating that he had gathered or

reviewed such records. I also spoke with his investigator, Glenn Sukys who only preserved recorded interviews and some raw notes, but had no record that he gathered court records for Mr. Shaw. Again, the divorce records were mentioned at trial, but it appears that defense counsel never looked at the actual court records themselves. These records are quickly and easily obtainable, as they are court public records.

13. There are actually two divorce cases filed in Pierce County Superior Court. The first was filed by Tiffany Croll in 2006 on the same day that she filed a protection order against Jose. The second divorce case was filed in 2011. A review of the court files indicate the following:
14. The protection order (06-2-03036-8) was filed by Tiffany Croll against Jose Cornelio, alleging that on 10/14/06 Jose came home, lifted up his shirt and showed her a gun and threatened her. He further wanted to take the kids with him and threatened suicide and homicide if she cheated on him. She complains that Jose is very jealous and controlling. He says he is going to take the children to Mexico so he doesn't have to pay child support. She denies that he is violent with the children. There is no reference to or allegations of sexual abuse.
15. The first divorce was filed in 2006 (06-3-03531-2). Jose had an attorney representing him in both of the divorce proceedings. After some initial filings and motions, the first divorce in 2006 was quickly dismissed. It was later discussed that the parties tried to mend their marriage and Tiffany moved back in with Jose. A short time thereafter, however, Tiffany again left Jose and they reached an agreement that Tiffany would bring the children for visits every other weekend. This worked out until about 2011 when she got angry at Jose and took off with the children, not allowing him to see them. She then filed for a second divorce in 2011 (11-3-02679-4).

16. Tiffany never makes any references in any of the paperwork that she filed in either of the divorce cases that she suspects Jose was abusing the children, specifically A.C. This is curious since she states in pre-trial interviews that she suspected Jose of sexually abusing the children. Why wouldn't she reference it in divorce proceedings whereby the custody of the children is to be decided? She only refers in paperwork filed in the 2011 divorce that Jose had been sexually harassing Tiffany's younger sister and that at the age of 13, he had grabbed her breast. She also says that someone reported to her that Jose had been trying to have sexual relations with her sister when her sister was babysitting. There are no other accusations of sexual abuse in the court documents that I located and reviewed.
17. The timing of the second divorce is interesting. On October 12, 2012 the court issued the final parenting plan giving full custody to Jose. The court also ordered Tiffany to pay child support of \$281 per month. Curiously, the following day, A.C. discloses abuse to Tiffany, alleging that Jose's nephew Endy was abusing her, and that the abuse occurred when A.C. was living with Jose. The timing of the sexual abuse disclosure is interesting as Jose is granted full custody of the girls and that Tiffany has to pay child support. It supports the notion and defense theory that Tiffany was pressing her daughter to report that her dad sexually abused her in the days surrounding the divorce.
18. In the documents that Jose filed with the court he refers to concerns that Tiffany is influencing A.C. and getting her to say things that are not true. From a document that Jose filed as a response to the petition for divorce, he wrote, *"Tiffany sent me a test (sp?) message on July 5th [2011] asking me to help her because her car broke down. I was not able to help her. She then started cussing at me and told me that I was not going to see the kids again. Then she had [A.C.] call me and tell me that I am not a good father and that she does not want to live with me because I had another family. The girls and my girlfriend get along fine.*

I cannot believe that Tiffany would put [A.C.] in the middle of this. It is not good for her especially when her parents are separate. I am worried about what she [Tiffany] is telling them to say." This example of Tiffany coaching or influencing A.C. to say things about Jose and his family that were not true, was something that was never explored in pre-trial interviews and suggests that Mr. Shaw did not review these court documents prior to defense interviews and trial.

Eye witness will refute complaining witness' testimony.

19. Edgar Domingo is Endy's younger brother. He was referenced in multiple pre-trial interviews as being present at his uncle Jose's home when the abuse was alleged to have occurred. Despite him being a rather significant witness, nobody ever interviewed him. During my interview of Edgar, he reported several interesting things pertinent to Endy's case and defense theory:

20. Edgar remembers staying over at Jose's home with his brother Endy when Jose's daughters were there. Edgar and A.C. both report that Endy spent the night at Jose's regularly. However, A.C. does not refer to Edgar even being there. Edgar would have refuted A.C.'s testimony by stating:

I. Edgar and Endy always stayed the night at Jose's together.

The only exception was 3-4 times when Endy stayed at Jose's when he got into a fight with his parents or when Jose was helping him with a school project and he would go to school the next day. This contrasts greatly with A.C.'s

testimony that Endy (presumably alone) stayed at Jose's for several months during which time he abused her.

II. Edgar and Endy always slept in the living room. They always fought over the smaller couches, not the large couch. The large couch was uncomfortable because it had a sway in the middle. The smaller couches were more comfortable. A.C. and her sister could both fit on the large couch and sometimes slept there together. Otherwise, Jose would often take one of the girls back into his room with him, leaving the other one on one of the couches. The large couch was closest to the hallway where Jose slept and so more visible from Jose's room. There were actually three couches and not two couches as A.C. described.

III. Edgar never woke up to seeing Endy and A.C. together or saw anyone moving around on the couches. Edgar sometimes woke up to use the bathroom and would ask Endy to escort him down the hallway. Edgar never heard Endy and A.C. talking or heard A.C. crying or telling Endy to stop.

IV. The most common arrangement where Endy and Edgar slept over was during times when Jose did not have the girls on Saturdays since his car could not hold all of them and so if the boys came over to his house, it was most commonly on Saturdays when Jose did not have the girls.

21. Additionally, Edgar recalled how as a child, he and Endy were exposed to sexually inappropriate behavior by A.C.'s mother Tiffany Croll. Tiffany played a "choking game" with Endy when Endy was a youngster, whereby she choked him out and he lost consciousness. Edgar does not believe that the choking game was sexual but was only a teenager when it happened and had no prior sexual knowledge or history to understand the context.
22. Tiffany invited Edgar over to cut her son's hair when she was separated from Jose. She offered Edgar hard liquor and overpaid him for cutting her son's hair. These enticements seem to this investigator to be a prelude to sexually inappropriate behavior.
23. Tiffany encouraged Edgar and Endy to have sex with older women when the boys were 12 or 13 years old. The women were a little older than Tiffany and were adults when the encouragement occurred.

Police reports show A.C. was exposed to drugs, violence and neglect while in the care of her mother, Tiffany Croll.

24. I sought police reports from various police agencies on Tiffany and Jose. Of the records I received, there were a few that offer a glimpse into A.C.'s life with her mother and suggest that she was exposed to adult situations, more vulnerable to being abused by any number of people, and supports the claims Endy's family makes regarding Tiffany's lifestyle.
25. On December 1, 2006, a few months after Tiffany sought divorce from Jose for the first time, the Tacoma Police Department investigated a dispute or robbery involving Tiffany. One of the witnesses spoke about their knowledge of Tiffany. They told the police that Tiffany was involved with gangs. Tiffany leaves her children with people who use drugs. The witness also reported that Tiffany pays babysitters with drugs for watching her kids. This was never

explored in Endy's case, but seems relevant in that it suggests that the girls were left in precarious places and vulnerable to sexual or physical abuse by any number of individuals.

26. In January 2011, Tiffany made a complaint to police about an abusive ex-boyfriend named Soli Moefili. This was the same year that she filed for her second divorce from Jose and illustrates the on-going level of violence that Tiffany exposed her children to.

I certify or declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct. I am willing to testify in court as to the contents of this declaration.

8/14/2017 Seattle, WA
DATE AND PLACE

Karen Sanderson
KAREN SANDERSON

EXHIBIT C

1
2
3
4
5
6 **SUPERIOR COURT OF WASHINGTON**
7 **COUNTY OF PIERCE**

8
9 STATE OF WASHINGTON

10 **Plaintiff**

11 v.

12 ENDY DOMINGO CORNELIO

13 **Defendant**

NO. 13-1-02753-6

TRANSCRIPT OF INTERVIEW
OF JOSE CORNELIO ON
JANUARY 24, 2014

14
15 Present for Interview: Interviewee Jose Cornelio
16 Defense Attorney David Shaw
17 Victim Advocate Lisa Warner
18 Deputy Prosecutor Kara Sanchez
19 DAC Intern Paul Lunsmann
20
21
22

23 Transcription by: DeAdra Kendziora
24 1001 N. 6th Street, Apt 5
25 Tacoma, WA 98403
26 (253) 209-9178

1 SHAW: Ok, it is Friday, January 24th, 2014. We're on the 7th floor of the
2 County-City Building in Tacoma, Washington in the matter of State
3 of Washington versus Endy Domingo Cornelio. That's spelled E-N-
4 D-Y, D-O-M-I-N-G-O, C-O-R-N-E-L-I-O...Superior Court Case
5 number 13-1-02753-6. I am Dave Shaw, representing the defendant,
6 Endy Domingo Cornelio and maybe everyone can identify themselves
7 please. Go ahead, if you would.

8 WARNER: Lisa Warner, Victim Advocate.

9 SANCHEZ: Kara Sanchez, Deputy Prosecuting Attorney.

10 LUNSMANN: Paul Lunsman, DAC intern.

11 SHAW: And we are here to interview Jose Cornelio. J-O-S-E...with the
12 accent...C-O-R-N-E-L-I-O. Is that correct, Mr. Cornelio?

13 CORNELIO: Yes.

14 SHAW: Do we have your permission to tape record this interview?

15 CORNELIO: Yes.

16 SHAW: Thank you. Mr. Cornelio...you were born on August 25th, 1977, is
17 that correct?

18 CORNELIO: That's correct.

19 SHAW: And where were you born?

20 CORNELIO: In Mexico.

21 SHAW: How long have you lived in this area?

22 CORNELIO: Uh...in Washington?

23 SHAW: Yes.

24 CORNELIO: Um...I came here like um...um, uh...1993.

25 SHAW: Ok. So over 20 years you've been...

26 CORNELIO: Yes.

1 SHAW: ...in this area.
2 CORNELIO: But I went back to Mexico like on the 2000 and then I came back.
3 SHAW: And when did you come back? What year please?
4 CORNELIO: Um...same, 2000.
5 SHAW: Ok. So the...most of the time since 1993 you've been living in this
6 area?
7 CORNELIO: Yes.
8 SHAW: Thank you. Please keep your voice up if you would, Mr. Cornelio.
9 Are you currently married, Mr. Cornelio?
10 CORNELIO: Uh...I'm not anymore.
11 SHAW: Ok. When did you get a divorce?
12 CORNELIO: Uh...I believe it was last year on September...
13 SHAW: September of 2013?
14 CORNELIO: I think so.
15 SHAW: You think?
16 CORNELIO: Yes.
17 SHAW: And what was the name of your former wife?
18 CORNELIO: Um...Tiffany...Marie...
19 SHAW: Ok. That would be...Croll...
20 CORNELIO: Yes.
21 SHAW: C-R-O-L-L for last name?
22 CORNELIO: Yes.
23 SHAW: Ok. Did you have any children from that marriage?
24
25
26

1 CORNELIO: Mm...my two daughters.
2 SHAW: And what were their names please?
3 CORNELIO: Um...first one is Alejandra...Marie...Cornelio-Croll.
4 SHAW: Alejandra...
5 CORNELIO: Marie.
6 SHAW: ...Marie. And what is her last name?
7 CORNELIO: Uh, Cornelio...
8 SHAW: Ok. Same as yours.
9 CORNELIO: Yes.
10 SHAW: Ok, and how old is she?
11 CORNELIO: Right now she is 10.
12 SHAW: Ok. And the other daughter?
13 CORNELIO: It's Gabriella...
14 SHAW: Gabriella.
15 CORNELIO: Yeah.
16 SHAW: Alright.
17 CORNELIO: Juana...J-U...A-N...A.
18 SHAW: Juana?
19 CORNELIO: Yeah.
20 SHAW: Ok. Cornelio?
21 CORNELIO: Yes.
22 SHAW: And how old is she?
23
24
25
26

1 CORNELIO: She's 8.
2 SHAW: Ok. And do you have custody of these girls?
3 CORNELIO: Yes, I do.
4 SHAW: Ok. Do you know why you are here today, Mr. Cornelio?
5 CORNELIO: Well...not really.
6 SHAW: Ok. Have you...talked to anybody about any allegations or claims
7 which one of your daughters have made about being touched
8 inappropriately?
9 CORNELIO: No.
10 SHAW: No one has talked to you at all?
11 CORNELIO: Well...from...from...what do you mean like from...many of here or
12 from just anybody?
13 SHAW: Well, let's start with anybody from here. Have you talked to anybody
14 in this room about it?
15 CORNELIO: Well I did talk to you.
16 SHAW: Ok. And what was the nature of that conversation?
17 CORNELIO: That-that was a...you asked me if um...wh-what I knew about wh-
18 what's goin on with my daughter.
19 SHAW: Ok.
20 CORNELIO: And then um...
21 SHAW: And how did you answer if you remember?
22 CORNELIO: Well um, I-I-I um...the reason I-I answer um...is the um...it's hard
23 to...
24 SHAW: You're doing just fine, Mr. Cornelio.
25 CORNELIO: Yeah. Um...well you asked me if um, if I knew that Endy did the...
26

1 SHAW: Ok.

2 CORNELIO: ...the whatever you know, touch her or whatever...and then I
3 say...not that I know until now, but I'm not sure he did or not because
4 most of the time...my daughters went with um...mom.

5 SHAW: Ok.

6 CORNELIO: That was when she left. She left the house...and she took my
7 daughters. And then I told you that on...when I talked to you.

8 SHAW: Oh...

9 CORNELIO: I explained you pretty much while...you know, what happened...and
10 the...she took over my daughters...

11 SHAW: Ok, by she...being...your ex-wife, Tiffany?

12 CORNELIO: Yes.

13 SHAW: Ok. So for a while, did Tiffany have custody of these children?

14 CORNELIO: N...mm...well...nah, just...took off with them.

15 SHAW: Yeah, we....

16 CORNELIO: And so she didn't have no custody, she just took them.

17 SHAW: Did she leave the area with them?

18 CORNELIO: Uh, she did...she went to Lincoln City.

19 SHAW: Which is where?

20 CORNELIO: In uh, Oregon.

21 SHAW: Ok. How long did she stay down there?

22 CORNELIO: Um...well...I'm not sure because she was over there and then she
23 moved to one different place and she was kinda like...which I didn't
24 care, you know, long as I talk to my daughters so I wasn't pretty
25 much you know...investigating where was she living or where was
26 she at...

1 SHAW: Ok.
2 CORNELIO: ...so...
3 SHAW: Were you in touch with your daughters at this time?
4 CORNELIO: Yes. About...
5 SHAW: How frequently would you talk to them?
6 CORNELIO: Uh, like every two weeks pretty much, she will bring them around
7 me, or bring them to me...like just for the weekends.
8 SHAW: Ok.
9 CORNELIO: Because she didn't want me to have em so...
10 SHAW: Ok so...your ex-wife left the area with both daughters...
11 CORNELIO: Yes.
12 SHAW: ...when did this happen please?
13 CORNELIO: Um...it's probably like around like 5 years...6 years...
14 SHAW: Ago?
15 CORNELIO: Yes.
16 SHAW: Ok. Might help...if...you remember how old the oldest daughter,
17 Alejandra, was when...
18 CORNELIO: Um...
19 SHAW: ...she left.
20 CORNELIO: ...I believe she was like um...5.
21 SHAW: Ok. That'd be 5 years ago then if she's 10 now, wouldn't it?
22 CORNELIO: Yeah, 5...
23 SHAW: Ok.
24
25
26

1 CORNELIO: ...or 6, yeah.

2 SHAW: So...Tiffany left with the two girls...you weren't exactly sure
3 where...at times? Is that right?

4 CORNELIO: Well y...I know that she was living in um...Lincoln City...

5 SHAW: Ok.

6 CORNELIO: ...which is in Oregon.

7 SHAW: That's about a 5 hour drive or so from here...

8 CORNELIO: Yes.

9 SHAW: ...isn't it?

10 CORNELIO: So she went with her um...grandma?

11 SHAW: Ok.

12 CORNELIO: So...

13 SHAW: And...

14 CORNELIO: ...she wasn't even over there.

15 SHAW: ...and then about every other week she would...somehow drive the
16 girls up here and leave them with you?

17 CORNELIO: Yes. So, the girls...never lived with me like...since we split up...the
18 girls never live with me so that's what I'm...I don't understand about
19 Endy...and then...

20 SHAW: Ok. Well we'll-we'll get to that...

21 CORNELIO: Ok.

22 SHAW: Now...how long did this situation with your daughters living away
23 from you, but visiting you every other week or so...how long did that
24 continue?

25

26

1 CORNELIO: Uh, since she left...um...that happened until um...I came the first
2 time to court...and they um...the judge gave me the girls to me so
3 which is like two years ago cause I got divorced last year so...
4 SHAW: So you got custody about two years ago, you say?
5 CORNELIO: Yeah, it was like a temporary...
6 SHAW: Ok.
7 CORNELIO: ...I shoulda brought my papers. Temporary custody...and then on the
8 final, you know, divorce and all that...that was last year.
9 SHAW: Ok.
10 CORNELIO: So...probably like two years ago that when I started having the girls.
11 SHAW: Ok. Keep your voice up please if-if you would...
12 CORNELIO: Yeah.
13 SHAW: ...for the tape. Thank you. So you got temporary custody about two
14 years ago...you think?
15 CORNELIO: Yes.
16 SHAW: Ok. And if I say anything that is not correct, or inaccurate...you
17 correct me, ok?
18 CORNELIO: Yes.
19 SHAW: Temporary custody two years ago, full time custody...
20 CORNELIO: Last year.
21 SHAW: ...Fall of 2013, ya think?
22 CORNELIO: Mm...September...cause it was last year...not this September,
23 but...the one before...
24 SHAW: So that'd be...
25 CORNELIO: ...(unintelligible)...
26

1 SHAW: ...2012 then.
2 CORNELIO: Yes.
3 SHAW: Ok.
4 CORNELIO: Like when I got my full custody.
5 SHAW: Ok. Who was living with you...while the girls were mainly with their
6 mother?
7 CORNELIO: Um...well first...at first, nobody. Nobody, and then um, like...like
8 uh...week or so...um, I call my nephew...actually was two of my
9 nephews...Endy and his brother. And um...I call em, they wanted to
10 come and stay at my place because...I was depressed. I...needed
11 somebody to...you know, just be with me and, you know....
12 SHAW: Ok.
13 CORNELIO: ...try to...get over whatever I was going through.
14 SHAW: Ok.
15 CORNELIO: So they were going...they're like...very much n-not every night, but
16 you know...on the nights I'm...it's hard to tell that probably...three
17 times for week...sometimes all week...they will come to the house
18 and stay with me...
19 SHAW: Ok.
20 CORNELIO: ...for like probably for like...three, four months.
21 SHAW: Ok. So this would be Endy and...
22 CORNELIO: [Edgar]...
23 SHAW: ...Endy's cousin or his brother...
24 CORNELIO: His brother.
25 SHAW: His brother. Who...
26 CORNELIO: Yeah.

1 SHAW: ...what is his brother's name?
2 CORNELIO: Uh. [Edgar]...Domingo.
3 SHAW: Ok. Did they ever move in full time or...
4 CORNELIO: No, no...
5 SHAW: ...were they...
6 CORNELIO: ...no, they...
7 SHAW: Ok.
8 CORNELIO: ...just come and stay with me. Sometimes they...they didn't come,
9 you know, sometimes you know so...
10 SHAW: Would they stay for a couple nights in a row? Or how long would
11 they stay when they came?
12 CORNELIO: Hm, well sometimes...it was kinda like...some days they will...they
13 didn't wanna to come, some other days they do and...it was just
14 pretty much, you know, there was no days for them to be there so...
15 SHAW: Ok. Was Endy working at that time?
16 CORNELIO: No, he was going to school. High school.
17 SHAW: Do you remember which high school?
18 CORNELIO: Um....Puyallup.
19 SHAW: Ok.
20 CORNELIO: High School.
21 SHAW: How about Edgar?
22 CORNELIO: Uh, he was going to um...elementary.
23 SHAW: Oh, Edgar is quite a bit younger then?
24 CORNELIO: Yes.
25
26

1 SHAW: Ok.
2 CORNELIO: Yeah.
3 SHAW: Did the parents of Endy and Edgar agree to this?
4 CORNELIO: U, agree about them coming...
5 SHAW: Them staying...
6 CORNELIO: ...to...
7 SHAW: ...with you?
8 CORNELIO: Yes. Yes because they knew what was I going through and that's...
9 SHAW: Ok. Were you working at that time?
10 CORNELIO: Mm...yes.
11 SHAW: And where was that please?
12 CORNELIO: It's um...the company's name is RDP Construction.
13 SHAW: Ok. When...Alejandra and Gabriella would...be brought to you for a
14 visit...would Endy and Edgar be there?
15 CORNELIO: Mm...well sometimes, not all the time.
16 SHAW: Ok.
17 CORNELIO: Because it's not like they were coming every day, you know, my
18 daughter were coming, you know, I didn't know when they were
19 gonna come or not...would not so...
20 SHAW: Ok. Did Alejandra or Gabriella...ever approach you about being
21 touched?
22 CORNELIO: No.
23 SHAW: What is the first time you ever heard about this?
24 CORNELIO: Um...that was like um...last year...
25
26

1 SHAW: Do you remember the month?
2 CORNELIO: Mm...no.
3 SHAW: That'd be 2013?
4 CORNELIO: Yes.
5 SHAW: Ok. Do you remember where you were when they told you?
6 CORNELIO: Yes.
7 SHAW: And where was that?
8 CORNELIO: I-I came, me and my girlfriend we came to see um, my friend that
9 was...here in jail...
10 SHAW: Ok.
11 CORNELIO: ...so I came, it was probably like nine o'clock...or
12 seven....somewhere around that, but we have, you know, like
13 um...we have an appointment to come and see him...
14 SHAW: Ok.
15 CORNELIO: ...and then when I was on my way home, um, then um...Tiffany start
16 texting me, you know, like...and calling and calling and calling...and
17 then finally she just...wanted me to meet her somewhere cause she
18 wanted to talk to me so...I went um...to meet her out the...in
19 Puyallup, by Ross...and that's when she told me what happened.
20 SHAW: Do you remember what...how Tiffany described it to you?
21 CORNELIO: Um...all I remember is that uh, she just came to me and...well pretty
22 much like start crying and...told me that um...Endy molested her
23 or...whatever, you know, what...
24 SHAW: Who was...was this Tiffany telling you this or was this Alejandra?
25 CORNELIO: Uh, Tiffany.
26 SHAW: Ok.
CORNELIO: Because Alejandra didn't wanna to get out of the car.

1 SHAW: Where...

2 CORNELIO: Cause she was like afraid, I guess. I don't...

3 SHAW: Ok. So when you heard from Tiffany about this, the first time...was it

4 in your car? Or in Tiffany's car?

5 CORNELIO: Mm...

6 SHAW: Or-or was it outside of the car in a building?

7 CORNELIO: No, it was...I was getting out of the car when she came to me and...

8 SHAW: Ok, and...

9 CORNELIO: ...she told me to go and talk to her so I got outta the car and went and

10 talked to her because...she didn't want uh, my girlfriend to, you

11 know, hear...

12 SHAW: Ok, so it was just you and Tiffany...

13 CORNELIO: Yes.

14 SHAW: ...talking? Ok. Where was Alejandra at this time?

15 CORNELIO: In the...in the car with Tiffany.

16 SHAW: Ok...so Alejandra stayed in the car...

17 CORNELIO: Yes...Tiffany got out...

18 SHAW: ...Tiffany left the car...

19 CORNELIO: ...yeah, she got out...

20 SHAW: ...so just you two were conversing...

21 CORNELIO: Yes.

22 SHAW: ...about this. Is that right?

23 CORNELIO: Yes.

24

25

26

1 SHAW: And was that the first day, to your knowledge, that Tiffany had heard
2 about it as well?

3 CORNELIO: Well...yeah, that-that was the night that she told me so...I'm pretty
4 sure that was the same, you know, same time or whatever. Same day
5 that she heard from Alejandra so...

6 SHAW: Ok. Do you remember what Tiffany...told you happened at that time?

7 CORNELIO: Mm...just a little bit.

8 SHAW: And what was that please?

9 CORNELIO: Um...she uh, told me that um...that somebody touched, you know,
10 Alejandra. And um...and that she was afraid to come and...see me.
11 And then I...she keeps like looking at Alejandra, like to see if she will
12 come and tell me what happened, but she wouldn't. She was a scared,
13 so um, then Tiffany told me I...um...so somebody just um...molest
14 Aleja...Alejandra...so I was like...and I was like just...in shock
15 pretty much, and then she's like so you wanna know who? I was
16 like...well, yeah. And like...Endy...

17 SHAW: Did Tiffany tell you...the time period that this touching took place?

18 CORNELIO: Well she told me that when she was living with me...when-when
19 Alejandra was living with me which...I can still not understand how
20 did that happen if um...she had my daughter most of the time.

21 SHAW: Ok. And how many years....lemme back up, excuse me. When you
22 first heard about her...it's because Tiffany had been texting and
23 writing and...er, somehow trying to communicate with you...

24 CORNELIO: Yeah.

25 SHAW: ...so it was somewhat urgent, is that correct?

26 CORNELIO: Yeah, but that was the same...I believe it was the same night
that...she found out.

SHAW: Ok. Did you have full custody of...Alejandra at this time?

CORNELIO: When that happened?

SHAW: No, when you heard about it the first time.

1 CORNELIO: Oh...um, yes.

2 SHAW: Ok. So was this at the end of...one of the visits with Mom?

3 CORNELIO: Mm...yeah, I think she...she took them. I don't remember if she took
4 them that night or couple days before and...yeah, that's how...when
5 my daughters were with her, that's when she found out...or Alejandra
6 told her.

7 SHAW: Ok. So this happened when the girls were staying with Mom most of
8 the time?

9 CORNELIO: Yes.

10 SHAW: Or...with you?

11 CORNELIO: Um...well, with Mom. I mean...yeah. Cause that's when she-she had
12 em...Alejandra was fi...if...

13 SHAW: Ok...

14 CORNELIO: ...I think she was like five so...that's when she left me.

15 SHAW: And except for every other weekend, I think you said...

16 CORNELIO: Uh...

17 SHAW: ...you got them...

18 CORNELIO: ...yeah, sometimes...

19 SHAW: ...something like that...

20 CORNELIO: ...she will bring it like on...when she will come, when she will drive
21 down from Oregon to see um...her friends anywhere around the area,
22 that when she was like call me and like you wanna see the girls? I'm
23 here...and I go yeah. And she will bring em and just leave em there
24 for a couple hours and then just leave again.

25 SHAW: Ok. When she would do that, and leave the girls with you...and
26 you're their dad, right?

CORNELIO: Yes.

1 SHAW: And they like to be with you, right?

2 CORNELIO: Yes.

3 SHAW: Would you stay with them? Or would you have somebody babysit
4 them?

5 CORNELIO: I will stay with them. I mean they're my daughters...

6 SHAW: Yeah.

7 CORNELIO: ...if I didn't see em the whole time and I didn't know what was gonna
8 happen, you know...why not enjoy em so I'm pretty much was there.

9 SHAW: Would Endy and Edgar be staying there occasionally when the girls
10 were there?

11 CORNELIO: Yeah, but I was there too. But like I say they will come when
12 I...when I will come from work...they will come because nobody,
13 obviously if nobody was there...unless I come home then that's when
14 they will come.

15 SHAW: Ok.

16 CORNELIO: And I was there most of the time. I was there with my daughters.

17 SHAW: Do you communicate well with your daughters, you think?

18 CORNELIO: Well yeah, but right now Alejandra is growing and she's...kinda
19 like...acting different to me.

20 SHAW: Ok. Back then...when...you heard about this and...during the time
21 that supposedly this happened...ok? That's what I'm talkin about.
22 Were you communicating well with your daughters?

23 CORNELIO: Yes.

24 SHAW: To your knowledge...Mr. Cornelio, did Alejandra ever tell you
25 that...I'm not comfortable visiting you?

26 CORNELIO: No. She...

SHAW: Did...go ahead.

1 CORNELIO: She's told me before you know, that she...she likes to go...you-you
2 know, like she likes to stay there with me, but sometimes she like
3 go...sometimes I don't wanna be here, I just wanna be here with
4 Mommy (unintelligible)...you go with your mom...

5 SHAW: Ok.

6 CORNELIO: ...but she, it's not like she's...doesn't ever wanna be with me.

7 SHAW: Did she ever tell you I don't want to come visit you if Endy is
8 around?

9 CORNELIO: Mm...no.

10 SHAW: Did Gabriella ever say that?

11 CORNELIO: No.

12 SHAW: Is there any reason...you know, that...Alejandra would be mad at
13 Endy over something?

14 CORNELIO: Well...she pretty much haven't seen him, so...you know what I'm
15 saying...

16 SHAW: I mean, I mean...

17 CORNELIO: ...so it's not like...

18 SHAW: ...before you heard what Tiffany said happened...or what Tiffany
19 said Alejandra told her...had they been arguing at all? Or-or...Endy
20 and Alejandra? Or Endy and...

21 CORNELIO: No.

22 SHAW: ...Gabriella?

23 CORNELIO: No. And that's what I don't get it because Alejandra...is still when
24 she was like 6 years old...7 years old...they used to wanna to go with
25 my sister. That's what I don't get it.

26 SHAW: They wanted to go with your sister?

CORNELIO: They still wanted to go...

1 SHAW: Who is...

2 CORNELIO: ...they like...

3 SHAW: ...who's your sister now?

4 CORNELIO: My sister is Endy's mom.

5 SHAW: Ok.

6 CORNELIO: So...

7 SHAW: And...ok.

8 CORNELIO: ...Alejandra and them, they alwa....can you bring, can you bring us to

9 uh, my tia...you know, Margarita...my sister?

10

11 SHAW: And...oh, your sister's name is what?

12 CORNELIO: Margarita.

13 SHAW: Margarita M-A-R...G-A-R-I-T-A?

14 CORNELIO: Yes.

15 SHAW: Marga...lovely name. Ok. And...would you bring the girls over to see

16 Margarita?

17 CORNELIO: Well I mean they were comfortable so sometimes you know,

18 sometimes...because...then she moved to Sumner so it was hard for

19 me to bring them all the way...so...but sometimes I will go with

20 them, you know, and they would just play with the girls there

21 and...yeah, just fine.

22 SHAW: Does Margarita have young girls who are...

23 CORNELIO: Yes.

24 SHAW: ...about the ages of...

25 CORNELIO: Yes.

26 SHAW: ...your girls?

1 CORNELIO: Yes.

2 SHAW: Ok. Does Alejandra...have a habit of exaggerating or...making things
3 up?

4 CORNELIO: Well see this is one thing, and I was, I was gonna have my girlfriend
5 record her...ok? Um...(unintelligible) probably was like um...

6 SHAW: What...

7 CORNELIO: ...like uh, almost...like three weeks...she-she told my girlfriend,
8 because they said tell em so she told my...well my girlfriend, and I
think my girlfriend ask her and so...

9 SHAW: I'm sorry, your girlfriend what?

10 CORNELIO: She um...she said tell em with her and talk...and somehow um,
11 Alejandra brought that up and she like well...um...uh, you...she was
12 like you know when you um...when you dream something and then
13 you like um...like...live that afterwards...you know, like you dream
14 about somethin and then you're like end up...doing it or end up
happening? I don't know what-what's called...you know, do you
know what I'm saying?

15 SHAW: Not déjà vu, is it?

16 CORNELIO: Mm...well, I believe...that's what it is...when uh...so she's like
17 um...about Endy. I don't remember if I dream or...you know? That-
that's when she got in shock and she like...and then uh...

18 SHAW: Who-who was....

19 CORNELIO: ...she like ok...

20 SHAW: ...in shock?

21 CORNELIO: Like...my girlfriend.

22 SHAW: Ok. What is your girlfriend's name?

23 CORNELIO: Um, Maria Erica...

24 SHAW: And what's her last name?

25

26

1 CORNELIO: Uh, Perez.
2 SHAW: Not...
3 CORNELIO: P-E...
4 SHAW: Ok. Erica...Perez?
5 CORNELIO: Yes.
6 SHAW: P...
7 CORNELIO: P-E...
8 SHAW: ...E...
9 CORNELIO: Yeah. R...
10 SHAW: Ok.
11 CORNELIO: ...E...Z.
12 SHAW: P-E-R-E-C?
13 CORNELIO: Z.
14 SHAW: You-you write it please. I'm sorry. Perez.
15 CORNELIO: Yeah.
16 SHAW: Ok.
17 CORNELIO: And it's Maria.
18 SHAW: Maria Erica Perez.
19 CORNELIO: Yes.
20 SHAW: Ok. At...when did that conversation take place?
21 CORNELIO: Uh, that was probably like...little bit past three weeks ago...if not
22 more.
23 SHAW: What is...does Maria Perez have her own phone number?
24
25
26

1 CORNELIO: Yes.
2 SHAW: And what is that please?
3 CORNELIO: Uh, actually I don't know it. Uh...
4 SHAW: You don't know your girlfriend's...
5 CORNELIO: ...I just...
6 SHAW: ...number? That's a bad thing...
7 CORNELIO: Well she change it...
8 SHAW: ...but ok...
9 CORNELIO: ...well I have it on my phone...
10 SHAW: Thank you for looking.
11 CORNELIO: You're welcome. It's 2-5-3...
12 SHAW: Ok.
13 CORNELIO: ...7-9-2...
14 SHAW: Alright.
15 CORNELIO: ...0-4-9-0.
16 SHAW: 2-5-3-7-9-2-0-4-9-0.
17 CORNELIO: Yes.
18 SHAW: Did you speak with Alejandra about that afterwards?
19 CORNELIO: No.
20 SHAW: Ok.
21 CORNELIO: No and uh...that conversation is still, you know, pending because
22 they never got to finish it.
23 SHAW: Why not?
24
25
26

1 CORNELIO: Uh...I don't know...Erica just-just kinda like um...too busy out the
2 house.
3 SHAW: Ok.
4 CORNELIO: So she haven't...
5 SHAW: That's fine.
6 CORNELIO: ...her much...
7 SHAW; And you're not a police officer and I'm not asking that you...take on
8 that role at all, Mr. Cornelio, ok? You have a daughter to raise and
9 that's fine. Is there...how long have you known Endy?
10 CORNELIO: Well...I pretty much babysit him when he was a baby.
11 SHAW: Ok, so all of his life really.
12 CORNELIO: Pretty much.
13 SHAW: Was he born here?
14 CORNELIO: Yes.
15 SHAW: Ok. To your knowledge, did Endy ever...try to be a lone with
16 Alejandra?
17 CORNELIO: No. But from...when Endy was coming to stay with me, he was pretty
18 much on the phone with even with his friends or his, you know,
19 girlfriends or whatever.
20 SHAW: Ok he was...did he seem like a normal high school kid...
21 CORNELIO: Yes.
22 SHAW: ...to you?
23 CORNELIO: Yes.
24 SHAW: Yeah. During this time, Alejandra never said to you...no Endy, don't
25 bring Endy around, keep him away? Any of that?
26 CORNELIO: No. Right after that happened, that's when she...Endy, no Endy.

1 SHAW: After...

2 CORNELIO: When I see...

3 SHAW: ...this went public...

4 CORNELIO: ...after...

5 SHAW: ...you mean?

6 CORNELIO: ...after Tiffany told me that and Alejandra knew that...from

7 there...and then, that's when she don't wanna see Endy. But before,

8 she never say anything. And obviously when you and a little baby,

9 you know, kinda like, don't like anybody they...they just do it, like

10 when that happen they start doing it, they start acting like different

and...that's what I don't get. Alejandra never say anything.

11 SHAW: Did Gabriella ever say anything?

12 CORNELIO: No.

13 SHAW: About Alejandra and how she was acting?

14 CORNELIO: No.

15 SHAW: Do those girls get along...well?

16 CORNELIO: Uh...right-right now it's just like...they argue too much.

17 SHAW: Ok, but...do they communicate with each other usually?

18 CORNELIO: Yes.

19 SHAW: Ok. Has Endy said anything to you about this situation?

20 CORNELIO: No, I haven't really talked to him, you know, I'm just kinda

21 like...right after I found this out, you know, I found out...um, Tiffany

22 is the one that has been doing all this so I'm pretty much in the

23 middle.

24 SHAW: Ok.

25 CORNELIO: So...I don't, you know, talk to him about his court or I don't...you

26 now, so I'm just kinda like...there. And I don't talk to their family

1 either about what's going on, so she's the one that knows what's
2 going on. So I mean I'm not...I'm pretty much is the one that is
3 hurt...cause I'm in the middle so...

4 SHAW: Is there anything about this situation...which...you think we need to
5 know and I have not asked you?

6 CORNELIO: Um...ok about...all this a start happening right after Tiffany and me
7 got divorced so how is a...you know, the...from where I've seen, it's
8 that Tiffany...wanted the girls. So she wanted the custody, she
9 wanted to have custody of them, and that didn't happen, so after all
10 that there is a lotta problems out...mean, coming out to me.

11 SHAW: What kind of problems? Besides this?

12 CORNELIO: Like um...like sometimes, you know, she don't...come and take the
13 girls...and then-then um...I told her hey, you supposed to come and
14 get em or...whatever, and then she's like well I don't have time and
15 my girlfriend, she's just waiting there for her to come and get em
16 or...whatever...

17 SHAW: And the girls are waiting too, to see their mom?

18 CORNELIO: Yes. Yes...

19 SHAW: Ok.

20 CORNELIO: ...and she just hold up something up, make something up or just say I
21 can't go today because I don't have a ride or something and...

22 SHAW: So the girls would be disappointed?

23 CORNELIO: Yes.

24 SHAW: Are the girls making it through school ok?

25 CORNELIO: Oh yeah.

26 SHAW: Oh...

27 CORNELIO: Well there is, there is um...totally at my place, there's like
28 seven...seven girls...so...my girlfriend is pretty much a
29 (unintelligible)...basic person, you know...she's just been taking care

1 of them and make sure, you know, they're doing good at school
2 and...

3 SHAW: Where...when Endy would come stay with you...with Edgar, you
4 were alone, so you didn't have this girlfriend, is that right?

5 CORNELIO: No because that's when Tiffany...broke up with me...

6 SHAW: Ok. May I ask how long you've been seeing this Maria girl?

7 CORNELIO: Uh, it's about...4 more...like 4 years, 4 years and a half.

8 SHAW: Ok. Do you live together or separate?

9 CORNELIO: Yes. We live to...we have a daughter...

10 SHAW: Ok. Oh, do ya...

11 CORNELIO: ...together.

12 SHAW: ...ok. Alright. We're going to turn the tape off...briefly. I'm going to
13 speak to Mr. Lunsmann...and then we'll wrap it up after just a couple
14 minutes, ok?

15 CORNELIO: Ok.

16 *(Recording is stopped and then resumed)*

17 SHAW: Thank you. We're back taping the interview with Jose Cornelio after
18 a 3 minute or so...pause. Mr. Cornelio...what would you like to see
19 happen from this unfortunate situation?

20 CORNELIO: Well, it just hard for me...it's hard for me because, like I say...first
21 I'm in the middle. Second, it's hard for me to believe that happened
22 because most of the time I was there with my daughters, so it's kinda
23 like...don't know. I'm in the middle. It's like I say, I don't...I don't
24 know.

25 SHAW: Ok.

26 CORNELIO: I don't know what to do. I don't know what to say. I'm in the middles
like I say.

SHAW: I-I understand, and that...and it's difficult for ya...

1 CORNELIO: Yes.

2 SHAW: ...and I-I'm not trying to...make it any more difficult. During these
3 times when...Tiffany, your ex-wife, would drop the girls off with
4 you...ok? Or any possible time during...when Endy was over...and
5 the girls...or just Alejandra might have been there...ok? Which was
6 probably was a period of some years, is that correct?

7 CORNELIO: Yes.

8 SHAW: Was there any time that Alejandra said to you...I don't wanna come
9 over here anymore and I don't wanna see Endy anymore?

10 CORNELIO: Nada. Nada...never.

11 SHAW: Never.

12 CORNELIO: Never. That's why I'm in shock. I don't believe this still, you know,
13 (unintelligible), I don't believe it still...

14 SHAW: Is that one...ok...excuse me, so you don't believe it frankly. Alright.
15 Thank you. Ok. We are concluding the interview.

16 ***END OF INTERVIEW***

17

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1 **CERTIFICATION OF TRANSCRIPTION**

2
3 State of Washington)
4 County of Pierce) ss.
5)

6 I, DeAdra M. Kendziora, declare under the penalty of perjury under the laws of the
7 State of Washington that the following is true and correct to the best of my knowledge and
8 belief.

9 I certify that I am over eighteen (18) years of age and not a party to this action.

10 I prepared the foregoing transcript from a digital recording provided by the
11 Department of Assigned Counsel of an interview of Jose Cornelio in the above
12 captioned matter, which took place in Pierce County, Washington on January 24,
13 2014 and consists of 28 pages.

14
15 Dated at Tacoma, Washington on this 29th day of JANUARY, 2014.



DeAdra M. Kendziora
DeAdra M. Kendziora, Notary Public
In and for the State of Washington
Residing at Pierce County, Washington
My commission expires: 05/05/2014

EXHIBIT D

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PIERCE

IN RE THE PERSONAL RESTRAINT

PETITION OF:

ENDY DOMINGO-CORNELIO,

Petitioner.

)
) SUPERIOR COURT #13-1-02753-6
)
) COURT OF APPEAL #46733-0-II
)
) DECLARATION OF EDGAR DOMINGO
)
)
)
)
)
)

I, Edgar Domingo Cornelio certify and declare as follows:

1. My name is Edgar Domingo Cornelio. My birthdate is January 3, 1994. My older brother is Endy Domingo Cornelio. We are less than two years apart in age. Endy and I have always lived together in the same house with my parents and other family members for my entire life, with the exception of the period following the allegations A.C. made towards Endy. I am very close with my brother Endy and spent much of my childhood with him doing activities together.
2. I was never contacted or interviewed by law enforcement, the prosecutor's office or Endy's defense attorney regarding the allegations that A.C. made towards my brother Endy. I was around at the time of the trial and would have been available to testify. I would have been available to provide information or statements to anybody who inquired with me. The first time that I was ever interviewed regarding Endy's case was in March of 2017 when Endy's appellate attorney's investigator contacted me. I met with her and answered her questions.

3. Endy and I had a close relationship with our mother's brother, Jose Cornelio (A.C.'s biological father). We saw Jose often throughout our lives, especially when we were pre-teens. Jose would often pick us up and take us to places. He was able to do things with us that our own parents did not have time to do since my parents had younger children that they had to take care of. Jose was like a second father to Endy and I.
4. I remember when Jose and Tiffany started dating before they had their daughters A.C. and G.C. Jose and Tiffany seemed to have a good relationship but at times there were some issues that they struggled with, including Tiffany having an affair with a member of our family, "Poncho." Over the years, there were a few times when Tiffany and Jose broke up.
5. I recall when I was 12 or 13 years old, Tiffany was living away from Jose. Endy and I went over to Tiffany's house for a visit. Tiffany played a "choking game" with us. I did not participate but Endy did. Tiffany choked Endy to a point where he passed out and was drooling. It was scary to watch Endy lose consciousness. Tiffany also encouraged Endy and I to have sex with older women. At the time, I did not understand what Tiffany was doing, but now realize that she was encouraging Endy and I to go into the bedroom and lie on the bed with two of Tiffany's friends who were much older than us. We did not do anything sexual with these older women. I now recognize that what Tiffany was asking us to do is inappropriate and illegal. When I was 16 years old, Tiffany would often offer me hard liquor if I came over to cut her son's hair. Again, I didn't have much perspective concerning this being inappropriate at the time.
6. After Tiffany and Jose broke up for good, Endy and I would often go to Jose's house to spend time together. Jose was lonely and wanted us there. We were very close with

Jose and enjoyed his company. We always spent the night at Jose's house together, with the exception of only a few times when I recall Endy spending the night without me. I recall about a dozen times that Endy and I spent the night at Jose's after Tiffany moved out. About half of the time that we spent the night there, A.C. and G.C. were also there. The other half of the time, it was just me, Endy and Jose.

7. I recall that we only spent an overnight at Jose's during the weekends and during the colder months – not during the summer months. Endy was with me every time that I went to spend the night at Jose's. Every time that Endy and I spent the night at Jose's we both slept in the living room. There were three couches in the living room. We always fought over the two smaller couches because they were more comfortable. The larger couch had a sway in the middle and was uncomfortable.
8. When Endy and I slept over at Jose's, the girls were sometimes there. Jose would bring the girls with him when Jose went to sleep. Jose slept in his own bedroom down the hall from the living room. He sometimes left one of the girls in the living room with Endy and I. If that was the case, then A.C. or G.C. would sleep on the larger couch since the boys would have gotten first choice and commandeered the smaller more preferred couches. Therefore, there were no scenarios where Endy would be sleeping on the larger couch and A.C. would have been sleeping on a smaller couch.
9. I sometimes woke up in the middle of the night to use the bathroom. I recall that I would wake Endy up when I went to use the bathroom, as I would ask him to escort me to the bathroom. I never woke up to Endy and A.C. together or hear them talking in the middle of the night and never saw them together on one of the couches. The living room is very small and confined. I am certain that if Endy and A.C. were engaged in some activity together, I would have been aware of it. When I did wake up

in the middle of the night to use the bathroom, I always observed that A.C. was sleeping where she had been before and Endy was sleeping where he was before.

There was never a time where I noticed anything out of place or inappropriate.

10. I've been around Endy and A.C. all of my life and have observed their relationship over many years. I have never seen Endy act inappropriate or sexual towards A.C. I have also never seen A.C. act nervous around Endy. They have always seemed to have a normal relationship.

11. I believe that Tiffany coached or encouraged A.C. to make accusations towards Endy.

I do not believe the allegations.

I certify or declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct. I am willing to testify in court as to the contents of this declaration.

8-16-17 Puyallup
DATE AND PLACE


EDGAR DOMINGO

EXHIBIT E

**SUPERIOR COURT OF WASHINGTON
COUNTY OF PIERCE**

STATE OF WASHINGTON,

Plaintiff,

v.

ENDY DOMINGO CORNELIO,

Defendant.

NO. 13-1-02753-6

**TRANSCRIPT OF INTERVIEW
OF [REDACTED] A. C. [REDACTED]**

Present for Interview:

Interviewee

[REDACTED]

Defense Attorney

Dave Shaw

Defense Investigator

Glen Sukys

Deputy Prosecutor

Kara Sanchez

Victim Advocate

Lisa Wanner

Transcription by:

Patti Wood
c/o 524 Tacoma Avenue South
Tacoma, WA 98402
(253)820-4429

Transcript of Interview of [REDACTED]
Re: State of Washington v. Endy Domingo Cornelio
Page 1 of 24

1 **3 Cornelio, Endy 13-1-02753-6 – 23:00**

2 SHAW: All right, we are back on the . . . tape . . . and the time please Mr. Sukys?

3 SUKYS: 2:40.

4 SHAW: 2:40 and the . . . interviewee is [REDACTED] that's spelled

5 [REDACTED], is that correct?

6 A.C.: Yes.

7 SHAW: Last name, Croll, CROLL, am I pronouncing that correctly or Croll?

8 A.C.: Yes.

9 SHAW: How do you pronounce it?

10 A.C.: Croll.

11 SHAW: Okay, do you have a middle name?

12 A.C.: [REDACTED]

13 SHAW: Okay, [REDACTED] **A.C.** . . . thank you and you are ten years old, is your
14 birth . . . ah, birthday November 9th?

15 A.C.: Yes.

16 SHAW: Of 2003, is that correct?

17 A.C.: Yes.

18 SHAW: Okay . . . and you like to go by Ali (spelling?) is that right?

19 A.C.: Yes.

20 SHAW: So where are you in school these days, beg your pardon, we also have the
21 Victim's Advocate, a Lisa Wanner, spelled W-A-N-N-E-R, correct?

1 WANNER: Correct.

2 SHAW: Okay . . . so what school do you go to Ali?

3 A.C.: Karshner . . .

4 SHAW: (Unintelligible).

5 A.C.: . . . Elementary.

6 SHAW: Ah, ah, can you spell that for me (unintelligible)?

7 A.C.: K-A-R-S-H-E, I mean . . . K-A-R-S-H-N-E-R.

8 SHAW: Okay . . . and fourth grade, is that right?

9 A.C.: Yes.

10 SHAW: What's your teacher's name?

11 A.C.: Mrs. Deleon.

12 SHAW: Deleon, D-E-L-E-O-N, I'm guessing, is that . . .

13 A.C.: Yes.

14 SHAW: . . . right? Okay . . . ah, do you speak Spanish?

15 A.C.: A little bit.

16 SHAW: Does Ms. Deleon speak Spanish?

17 A.C.: A little bit.

18 SHAW: Good can you speak Spanish with her now and then?

19 A.C.: Um, I'm not comfortable with it but . . .

20 SHAW: Okay, ah, boy it's, it would be handy to be able to speak more than one

21 language, wouldn't it?

22 A.C.: Yeah.

1 SHAW: So good you stick with it, language is a, a good thing . . . good, so fourth
2 grade, Ms. Deleon . . . and who are your best friends in, ah, that fourth grade
3 class please?
4 A.C.: In the class or . . .
5 SHAW: Anywhere . . .
6 A.C.: . . . in . . .
7 SHAW: . . . in the school.
8 A.C.: Alondra (spelling?) . . . Grace . . . Chloe . . . Griffin . . . Elijah . . . Josh.
9 SHAW: Good.
10 A.C.: And . . . Bryan (spelling?).
11 SHAW: Wow that's about at least seven people are good friends of yours, is that
12 right?
13 A.C.: Yeah.
14 SHAW: Good do you like school?
15 A.C.: A little bit.
16 SHAW: Okay, what's your favorite part of school?
17 A.C.: Social studies.
18 SHAW: Good, okay, let's . . . remember to keep your voice up Ali if you would
19 please, okay . . . so when you're not in school what do you like to do?
20 A.C.: I like to . . . do clock fractions like just when . . . I'm out of school . . . and I
21 have nothing to do I just . . . watch TV or do clock fractions.
22 SHAW: Clock fractions is that a form, a mathematic exercise or . . .

1 A.C.: Yeah.

2 SHAW: You good at math or arithmetic?

3 A.C.: I don't know.

4 SHAW: Well if you do it on your own you must be pretty good . . . that's good . . .

5 okay, do you do any sports at all?

6 A.C.: No.

7 SHAW: Do you like to exercise?

8 A.C.: Yeah.

9 SHAW: Okay, what kind of exercise?

10 A.C.: Run.

11 SHAW: Good, good for you.

12 A.C.: But I can barely run because I can't run for a long time because I have

13 asthma and it makes like I have to stop and . . . take a breath because I . . .

14 have to breathe to like really fast . . .

15 SHAW: I know what . . .

16 A.C.: yeah.

17 SHAW: I know something about asthma, our oldest daughter had asthma and she

18 swam, she got into swimming and that helped a lot . . . you know, cause the

19 moist air in the pool . . . around the pool . . . you might want to think about

20 that . . . so Ali why are we here today?

21 A.C.: Because . . . I don't know how to say it . . . but . . .

1 SHAW: It's, you're doing just fine, did anyone tell you why you would be coming
2 here today?
3 A.C.: Ah . . .
4 SHAW: Did your . . .
5 A.C.: . . . because . . .
6 SHAW: . . . mom?
7 A.C.: Endy . . . did bad stuff to me.
8 SHAW: Okay . . . when did you . . . tell people about what Endy did to you? . . .
9 When was the first time you told anybody?
10 A.C.: When I told my best friend, Alondra.
11 SHAW: Okay . . . and . . .
12 A.C.: And she told me she had the same thing with the same person . . . cause she,
13 her last name's Domingo too and she's a relative of (unintelligible) so she
14 told me that it happened to her too . . . and . . .
15 SHAW: Was, was . . . was this before or after you told your mom?
16 A.C.: Before.
17 SHAW: Okay, how much before?
18 A.C.: Like . . . like about three months.
19 SHAW: Okay . . . why did you not tell your mom . . . at that time?
20 A.C.: Because I was too . . . embarrassed because . . . I just don't feel comfortable
21 talking to her about it.
22 SHAW: Okay, do you . . . tell your mom most things that you do?

1 A.C.: Like, like what, like . . .

2 SHAW: Anything, school . . . play time, friends . . . disappointments in life . . . if you

3 don't do well in school do you tell your mom for example?

4 A.C.: Yeah.

5 SHAW: Okay, ah, do you love your mother?

6 A.C.: Yes.

7 SHAW: Do you trust her?

8 A.C.: In the middle.

9 SHAW: In the middle . . . now you live with your dad full time, is that correct?

10 A.C.: Yes.

11 SHAW: Okay . . . do you trust your father?

12 A.C.: Like in what, like just . . .

13 SHAW: In the same thing, in just in . . . everything about your life and what happens

14 to you, are you comfortable telling your dad?

15 A.C.: No.

16 SHAW: And why is that?

17 A.C.: I, I just, I'm not comfortable talking to boys . . . so . . . that's just why.

18 SHAW: Okay . . . your father's kind of a special boy though isn't he? . . . I mean.

19 A.C.: Yeah.

20 SHAW: He's a little different than . . . the boys in your class, for example, right?

21 A.C.: Yeah.

22 SHAW: Or cousins.

1 A.C.: Yeah.

2 SHAW: You didn't tell you dad about . . . Endy, is that correct?

3 A.C.: I did.

4 SHAW: You did? When did you tell your dad?

5 A.C.: The same day that . . . my, I was with my mom and they were on, they were

6 going out for, for their anniversary, my stepmom and my step and my real

7 dad . . . and . . . that's the day that we were just, it was like . . . eleven and

8 my mom told me to come to the living room and we, I told her . . . she . . .

9 she told me to go, we went to . . . um . . . to tell the police about it and then

10 they said that . . . um . . . you should tell their father and then, um, we went

11 to go tell my dad . . . and he said, that's not true because I had you guys all

12 the time . . . and I'm like, it is true and . . . that's the same day that we went

13 to go report it to the police.

14 SHAW: Okay . . . now [REDACTED] . . . how long . . . had this been going on between

15 you and Endy?

16 A.C.: (Unintelligible).

17 SHAW: By the time you told your mom?

18 A.C.: Probably . . . it was when I was little like four years old so . . . um, that

19 would have been like, it was almost five months . . . um, close to a year . . .

20 So . . .

21 SHAW: That's how long it actually went on five months to a year?

22 A.C.: Um-huh.

1 SHAW: Is that a yes?

2 A.C.: (Inaudible).

3 SHAW: Remember we're gonna say yes or no, okay.

4 A.C.: (Unintelligible).

5 SHAW: You're doing just fine, let's keep it up, okay . . . so . . . this went on for about

6 five months I think is what you said . . . is that accurate?

7 A.C.: Yes.

8 SHAW: Okay, if I say something and it's not accurate will you tell me because we

9 want . . . accurate or truthful information here, okay?

10 A.C.: Yes.

11 SHAW: And I'm not trying to put words in your mouth, how old, you said you were

12 quite young when this first started, is that right?

13 A.C.: Yes.

14 SHAW: Around four?

15 A.C.: Yes.

16 SHAW: Where did it happen the first time?

17 A.C.: At my dad's house.

18 SHAW: And . . . if you can remember why did you not tell your dad right away?

19 A.C.: Because Endy told, always told me to not tell my dad so I would believe

20 everyone that when I was little because I didn't know that they . . . like what

21 they, like . . . I was little so I didn't know . . . what it's, why would I, why I

22 would tell on them so

1 SHAW: Okay.

2 A.C.: . . . I . . . didn't tell.

3 SHAW: How about telling your mother when you saw her . . . at that young age, I

4 mean?

5 A.C.: Cause . . . he would tell me to not tell no one . . . like no one.

6 SHAW: Okay . . . Ali did you . . . ever tell your dad that . . . you don't want Endy

7 around, not about what happened but just I don't want Endy here?

8 A.C.: No, because . . . he would tell me why and I would have to tell him . . . so.

9 SHAW: Okay, did you ever tell your mom that you don't want to go to your dad's

10 house?

11 A.C.: No.

12 SHAW: And why not?

13 A.C.: Um . . . because we wouldn't, we don't go, we don't go . . . much over there.

14 We didn't go much over there so . . . I would just tell my mom . . . I

15 wouldn't tell my mom nothing about it.

16 SHAW: Weren't you living at your dad's place at this time?

17 A.C.: Yes . . . yes.

18 SHAW: And how often would you see your mother?

19 A.C.: On the weekends.

20 SHAW: Okay . . . if you . . . would rather have stayed with your mother . . . instead

21 of go back to your dad, you could have said that right?

22 A.C.: Um-huh, yeah.

1 SHAW: Can you tell me why you didn't tell your mom . . . I don't want to go back to
2 dad's . . . or I don't want Endy there at dads or anything like that?
3 A.C.: Um . . . because we . . . we were . . . we, ah . . . I don't think I have an
4 answer for that.
5 SHAW: That, that's okay, hon, yeah, okay, remember I said, if you know an answer
6 fine . . . if you don't have any answer . . . that's okay we, none of us here
7 have answers to everything, okay, if you think of an answer in a few minutes
8 you let me know, okay?
9 A.C.: Um-huh.
10 SHAW: Sometimes things click into your head . . . now . . . were you in school
11 during these times or were you not yet in school?
12 A.C.: I believe I was in preschool.
13 SHAW: Okay, do you remember telling a teacher?
14 A.C.: No.
15 SHAW: Okay, do you remember who your teacher or teachers were back then?
16 A.C.: Um, yeah, yes.
17 SHAW: Who, who was that?
18 A.C.: Ms., either it was Mrs. or Ms. Colleen and . . . Ms. Maria.
19 SHAW: Okay, did you like them?
20 A.C.: They were fun.
21 SHAW: Okay.
22 A.C.: Yeah.

1 SHAW: Did you trust them?

2 A.C.: Yeah.

3 SHAW: Okay . . . so this happened, I think you said when you quite young, four or

4 five? Is . . .

5 A.C.: Yes.

6 SHAW: . . . that right?

7 A.C.: Yes.

8 SHAW: And then the first time you told your mom anyway was about a year ago, is

9 that right?

10 A.C.: Yes.

11 SHAW: When you had just turned nine or were about to turn nine? Is that right?

12 A.C.: Yes.

13 SHAW: So that's, ah . . . several years anyway that you . . . didn't tell either parent, is

14 that right?

15 A.C.: Yes.

16 SHAW: Can you tell me why you would have waited that long . . . before you told

17 your mother?

18 A.C.: Cause really I . . . didn't . . . I . . . didn't really remember a lot of it so I . . . I

19 would . . . like cause I didn't know what it was when I was . . . growing, so,

20 um . . . so I just waited and waited until I knew what it was and then I told

21 my mom.

1 SHAW: Okay, did something happen either to you or somebody else . . . that . . .
2 either made you remember what happened or made you feel comfortable
3 enough to tell your mom what happened?
4 A.C.: Yes.
5 SHAW: And what event was that please?
6 A.C.: When my mom . . . cause we lived with her boyfriend and she would . . .
7 always tell me, she would be like, um . . . did your, did your dad do
8 something to you because . . . you're not acting normal and I'm like, no he
9 didn't and then she would . . . I got tired of, I got tired of her saying that all
10 the time so I just . . . told her . . . when . . . when . . . I wanted to.
11 SHAW: Okay . . . was anything going on with your mom or with you at the time
12 when you got tired of her asking and you said . . . it was Endy?
13 A.C.: What was the question?
14 SHAW: Well was . . . you said your mom kept asking, did your dad do something to
15 you? Okay.
16 A.C.: Yeah.
17 SHAW: And you got tired of her asking that.
18 A.C.: Yeah.
19 SHAW: And that's kind of what made you . . . report this, is that correct?
20 A.C.: Yes.
21 SHAW: Was anything going on with your life or with your mother's life . . . that . . .
22 made you comfortable enough a year ago to . . . say this to your mother?

1 A.C.: Um . . . no, just how she bothered me . . .

2 SHAW: Okay.

3 A.C.: . . . asking me.

4 SHAW: Okay . . . do you . . . remember . . . well did this happen between you and

5 Endy . . . more than once?

6 A.C.: Yes.

7 SHAW: Do you know how many times it happened?

8 A.C.: Almost every night I was with my dad.

9 SHAW: And where would it happen in your dad's place please?

10 A.C.: In the living room.

11 SHAW: And who was at home?

12 A.C.: My dad, my sister, him and me.

13 SHAW: Okay . . . ah, where would you be sleeping or where would you be when this

14 happened?

15 A.C.: I would be on the . . . one the, ah . . . we would be like, like this . . . the

16 couches would be like this.

17 SHAW: Were the couches one after another or at an angle like, like . . .

18 A.C.: One after another.

19 SHAW: Okay, so they were in kind of a line against a wall perhaps?

20 A.C.: Yeah.

21 SHAW: Okay.

22 A.C.: And then on . . . that's . . .

1 SHAW: Okay, speak up please, you're doing . . .

2 A.C.: Um . . .

3 SHAW: . . . very well.

4 A.C.: Yeah, he would just, um, tell me to . . . come over to his couch because it

5 was big enough . . . so I would go and . . . then he would just . . . start . . .

6 SHAW: Okay, I have to ask you please some details of this but I won't spend a lot of

7 time doing it, okay? . . . But what you said he would start, ah, what would he

8 start doing please?

9 A.C.: He would start . . . kissing me . . . in wrong ways . . . and . . . he would . . .

10 SHAW: Where would he kiss you?

11 A.C.: Um, like . . . on my mouth, in my mouth . . . and then that's like . . . probably

12 most of the things I remember, what I said . . . cause when I was talking with

13 the other lady . . . I . . . I wasn't watching a lot of the video, so I don't really

14 remember what I was talking about.

15 SHAW: When . . . when you were talking with the lady . . . okay . . . were you

16 remembering what happened when you talked to the lady?

17 A.C.: Yes.

18 SHAW: Are you saying that you don't remember anymore . . . what happened?

19 A.C.: Yeah.

20 SHAW: How, you said this happened just about . . . every night you were over at

21 your dad's?

22 A.C.: Yeah.

1 SHAW: How long, if you can remember, was Endy staying at your dad's?
2 A.C.: Like . . . five months.
3 SHAW: Okay . . . and during this five months you never told anybody, is that right?
4 A.C.: Yeah, yes.
5 SHAW: Did, ah, Endy finally move out?
6 A.C.: Yeah.
7 SHAW: Do you know why he moved out?
8 A.C.: Because he was still in school and then he . . . he just left because . . . he just
9 . . . wanted to move with his mom.
10 SHAW: Did you tell your mom you didn't want to go . . . to your dad's because Endy
11 was there?
12 A.C.: No.
13 SHAW: Can you think why you didn't?
14 A.C.: I just didn't tell them because I had, I (unintelligible) . . . I never told them
15 . . . no I, I didn't want to tell them because, um . . . it's just . . . because I
16 didn't . . . tell them that . . . this had happened to me so that's why I didn't
17 tell them because I haven't to, I hadn't . . . I haven't had told them that this
18 happened to me so that . . . that's . . . like why.
19 SHAW: Ali . . . has anyone else besides Endy touched you . . . in a way that makes
20 you uncomfortable?
21 A.C.: No.
22 SHAW: Nobody at all?

1 A.C.: Nobody at all.

2 SHAW: All right, we're gonna stop the tape here, what time is it please?

3 SUKYS: 3:03.

4 SHAW: Okay, we're (unintelligible) . . .

5 **4 Cornelio, Endy 13-1-02753-6 – 5:00**

6 FEMALE: (Unintelligible) like a band aid.

7 SHAW: What time is it please?

8 SUKYS: Ah, it's . . . 3:05.

9 SHAW: Okay, we're back on the tape now Ali, ah, we were on a break for a couple

10 of minutes and you had a chance to speak with Ms. Sanchez here, Kara,

11 right? . . . And maybe you remember something that, ah, or are more

12 comfortable talking about something that . . . you might not have been a few

13 minutes ago, so . . . is there something you wanted to tell us?

14 A.C.: Um, he wo, he would tell me to . . . lick his private spot.

15 SHAW: And who is he?

16 A.C.: Endy.

17 SHAW: Okay and when did he do this please?

18 A.C.: I don't remember the actual date but its somewhere in the times where . . . in

19 the five months.

20 SHAW: Okay . . . ah, do you remember how old you were when this happened?

21 A.C.: Four.

22 SHAW: Is that the best guess you can give us?

1 A.C.: Yeah.

2 SHAW: Okay . . . now . . . you've spoken to a few people about . . . this situation

3 with you and Endy, right?

4 A.C.: Yes.

5 SHAW: Of . . . perhaps, ah, some police came over and maybe spoke to your mom,

6 maybe they didn't speak to you, is that right?

7 A.C.: They didn't speak to me.

8 SHAW: Okay.

9 A.C.: Yeah.

10 SHAW: And then they arranged an interview with, ah . . . ah . . . a nice women after

11 a, a . . . medical exam, is that right?

12 A.C.: Yes.

13 SHAW: And is that when they, ah, recorded your interview?

14 A.C.: Yes.

15 SHAW: Okay, do you remember that?

16 A.C.: A little bit.

17 SHAW: Okay, ah . . . do you remember speaking about this with anybody else

18 besides those we just mentioned?

19 A.C.: Um . . . Katie.

20 SHAW: Katie . . . okay, would it be Kerry?

21 A.C.: No, my . . .

22 SHAW: Who, who is Katie?

1 A.C.: . . . my, my best friend.

2 SHAW: Okay . . . was that after you told your mom or before?

3 A.C.: After.

4 SHAW: Okay and anybody else?

5 A.C.: No.

6 SHAW: Okay . . . now . . . in . . . talking about this with . . . all of these people . . .

7 including your mom, okay . . . did you ever . . . say to people that . . . you

8 were afraid that . . . your dad might go to jail?

9 A.C.: Yes.

10 SHAW: Could we talk about that just for a minute please, who did you say that to?

11 A.C.: My mom.

12 SHAW: Okay and this was after they were separated, is that right?

13 A.C.: Yes.

14 SHAW: And why would you be afraid that your dad might go to jail?

15 A.C.: Because . . . I love him so much that I don't want him to go because . . .

16 SHAW: Well that's good.

17 A.C.: . . . he's . . . from Mexico.

18 SHAW: Okay.

19 A.C.: And I'm . . . afraid he's gonna get . . . deported.

20 SHAW: Ah . . . you, to your knowledge is he here legally . . . if you know?

21 A.C.: Um . . . I don't know.

1 SHAW: Okay, that's fine . . . but just because you're from Mexico isn't any reason
2 . . . that in and of itself . . . to go to jail . . . was there some other reason that
3 you were scared your dad might go to jail?

4 A.C.: Yeah, because . . . um . . . he . . . he's . . . such a good dad . . . that he . . . he
5 takes us a lot of places . . . and he . . . he buys us a lot of things . . . and . . .
6 that's just . . . I understand that he need, that he loves us so much that he . . .
7 can I take a break (unintelligible).

8 SHAW: Yes.

9 FEMALE: I'm gonna stop the recording.

10 SHAW: Go ahead, we'll stop the tape.

11 **5 Cornelio, Endy 13-1-02753-6 – 4:12**

12 SUKYS: We originally stopped the tape at 3:09, it is now, ah . . . 3:14 so it's basically
13 a five or six minute break and now we're resuming.

14 SHAW: Okay, Ali, we're almost done here, okay.

15 A.C.: Okay.

16 SHAW: So let's get through this, you're doing just fine . . . now . . . Ali when you
17 were four or five years old . . . you didn't know what deportation meant did
18 you?

19 A.C.: No.

20 SHAW: Okay . . . do you remember telling people you didn't want your father to go
21 to jail?

22 A.C.: I always tell people.

1 SHAW: You always tell people that?

2 A.C.: Yeah.

3 SHAW: And why do you do that?

4 A.C.: I don't know.

5 SHAW: I mean . . . most kids don't want their parents to go to jail . . . and most kids

6 don't tell other kids that they don't want their parents to go to jail because

7 everyone knows that I mean, right?

8 A.C.: Yeah.

9 SHAW: So . . . what was the reason . . . behind you telling people . . . that you didn't

10 want your dad to go to jail?

11 A.C.: Like why he would go to jail or . . . why I'm . . .

12 SHAW: Wh, why, what, what had your dad done . . . that made you think that he

13 might go to jail?

14 A.C.: Um . . . cause I don't know if he has his papers or not . . . and if he went to

15 jail he wouldn't be able to take care of us . . .

16 SHAW: Okay, well . . .

17 A.C.: . . . the way he does.

18 SHAW: Okay.

19 A.C.: And my mom can't take care of us because she has barely any money so . . .

20 SHAW: Okay . . . all of those are . . . good concerns on your part and I'm sure and

21 you love your dad, don't you?

22 A.C.: Yeah, I do.

1 SHAW: Okay, good and I'm sure he's lucky to have a daughter like you . . . was
2 somebody talking about trying to . . . put your dad in jail?
3 A.C.: My mom.
4 SHAW: Was this over the divorce Ali?
5 A.C.: Um . . . yes.
6 SHAW: Or did it have, did it have to do with anything besides the divorce?
7 A.C.: No.
8 SHAW: Did it have to do with you and your dad and your relationship?
9 A.C.: Yeah.
10 SHAW: And what concerned your mother so much . . . that she would make you
11 think that . . . she might want to put your dad in jail?
12 A.C.: Because she doesn't like my stepmom and she, he, she just doesn't want us
13 to live with her . . .
14 SHAW: Okay.
15 A.C.: . . . so, so she would just rather my dad . . . be . . . sent back to Mexico and
16 . . . not come back.
17 SHAW: Okay . . . Ali is there anything that . . . I have not asked you today that you
18 think we should know about this whole situation?
19 A.C.: No.
20 SHAW: Are there any answers that you gave, ah . . . to my questions that now you've
21 had a chance to think and maybe during the break . . . you'd like to change
22 your answer, you know, you thought about something during a break with

1 Ms. Sanchez . . . that you mentioned, anything else along those lines,
2 something that . . . you just didn't remember before and now you do?
3 A.C.: No.
4 SHAW: Okay . . . ah, we are concluding the . . . interview, what time is it please?
5 SUKYS: It's, ah 3:19.
6 SHAW: Great.
7 *****END OF INTERVIEW*****
8

CERTIFICATION OF TRANSCRIPTION

State of Washington)
) ss.
County of Pierce)

I, Patricia Wood, declare under the penalty of perjury under the laws of the State of Washington that the following is true and correct to the best of my knowledge and belief.

I certify that I am over eighteen years of age and not a party to this action.

I prepared the foregoing transcript from a CD digital recording provided by the Department of Assigned Counsel of an interview of [REDACTED] in the above captioned matter and consists of the foregoing twenty-three (23) pages.

Dated at Tacoma, Washington on this 23 day of December, 2014.



Patricia Wood
Patricia Wood, Notary Public
In and for the State of Washington
Residing at Pierce County, Washington
My commission expires: 04/14/2014

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3
4
5 IN THE COURT OF APPEALS
6 IN THE STATE OF WASHINGTON
7 DIVISION TWO

8 STATE OF WASHINGTON,

9 Respondent,

10 v.

11 ENDY DOMINGO-CORNELIO,

12 Appellant.

No. 13-1-02753-6

COA No. _____

CERTIFICATE OF SERVICE

13 **CERTIFICATE**

14 I certify that I mailed a copy of the Personal Restraint Petition to:

15 Pierce County Prosecuting Attorney's Office
16 930 Tacoma Avenue South, Room 946
Tacoma, WA 98402

17 And to:

18 Endy Domingo-Cornelio
19 DOC # 375893
P.O. Box 769
Connell, WA 99326

20 DATED this 30th day of August, 2017, in Seattle, WA.

21 

22 _____
23 Attorney for Appellant Endy Domingo-Cornelio
24 Emily M. Gause, WSBA #44446
GAUSE LAW OFFICES, PLLC

GAUSE LAW OFFICES PLLC

August 30, 2017 - 3:36 PM

Filing Personal Restraint Petition

Transmittal Information

Filed with Court: Court of Appeals Division II
Appellate Court Case Number: Case Initiation
Trial Court Case Title: State of Washington Vs Cornelio, Endy Domingo
Trial Court Case Number: 13-1-02753-6
Trial Court County: Pierce County Superior Court
Signing Judge: Vicki Hogan
Judgment Date: 2014-09-24

The following documents have been uploaded:

- 0-PRP_Personal_Restraint_Petition_20170830153604D2706460_9425.pdf
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Personal Restraint Petition
The Original File Name was Endy Domingo Cornelio Personal Restraint Petition FINAL FULL.pdf

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